SURRENDERING CONSENT: THE POLITICS OF TRANSITIONAL JUSTICE IN POST-GENOCIDE RWANDA

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SURRENDERING CONSENT: THE POLITICS OF TRANSITIONAL JUSTICE IN POST-GENOCIDE RWANDA

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This dissertation examines the consequential role of criminal trials for the transitional political regime and the prospect of democratization in Rwanda. It focuses on the 'gacaca courts', a customary local institution reconfigured by political elites and implemented on a mass scale to process thousands of cases of those accused of genocide crimes. It explains how individuals respond to the incentives in the gacaca law that reward confession when they are confronted with uncertain legal processes and feel threatened by political elites perceived as powerful, arbitrary and lacking legitimacy.

I find that individuals accused of genocide crimes confess when enough information has accumulated against them such that they may not be able to separate false testimony from the truth and defend themselves successfully in a gacaca court. However, once they have confessed, they fear that they may be singled out for indiscriminate retribution by the state. To minimize such a risk, the confessed become politically quiescent and tend to support the political status quo even though they do not believe that ruling elites have the moral authority to govern. I call this a 'consent-effect'. I build on this finding and lay out some plausible inferential arguments about the diffusion of the 'consent effect' among a wider population and its implications for the crucial end-of-transition elections.

This dissertation argues that the effects of the trials have served the interests of ruling elites. It has produced a compliant and quiescent citizenry dependent on ruling elites for benefits such as reduced punishment. It has enabled regime consolidation by the co-optation of gacaca judges, many of whom also occupy positions in local government structures. The basic premise of the trials, "genocide ideology" or the idea that people were willing executioners, has been used to justify repressive legislation and stifle dissent. Data for this dissertation are drawn from a small sample of confessed and non-confessed prisoners, detailed ethnography of gacaca court processes, trial transcripts, elite interviews, newspaper articles, reports of non-governmental organizations and other secondary literature.

BIOGRAPHICAL SKETCH

Anuradha (Anu) Chakravarty was born in New Delhi, India in 1976. She completed secondary school in Calcutta, India in 1995 and went on to earn a bachelors degree in political science. She graduated First Class First from Presidency College, Calcutta University in 1998. She earned a master's degree in International Relations from the School of International Studies, Jawaharlal Nehru University in New Delhi. She arrived at Cornell in the Fall of 2000 to commence doctoral studies in the Department of Government. She earned a second master's degree in January 2004 from the Department of Government at Cornell University. After conducting field research for a year and a half in Rwanda, Anu returned to Cornell in 2005 to write her dissertation. She spent the year 2007-8 as Visiting Fellow at the Joan B. Kroc Institute for International Peace Studies, University of Notre Dame. She joins the faculty in the department of political science at the University of South Carolina in the Fall of 2008.

For Dida (my grandmother)

for showing me that everything is possible

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My family has been a huge reservoir of support. Both my sisters have been unflinching in their faith in me even when I felt challenged and discouraged at many times. My mother inspires me with her love of books and her own prolific scholarship. I could not have survived some very turbulent years without my father's constant support, nurture and deep love. I am spurred on by his faith in me and his genuine interest in my research. Finally, to my husband, Shubhayu, who "beat me" to a doctoral degree, my deepest thanks for his love, his ability to make me laugh, and for helping to make things a little bit easier every step of the way.

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PREFACE

The Genocide in Rwanda: April-July 1994

The Rwandan genocide was a state-initiated project targeted against the Tutsi and orchestrated with ruthless efficiency. Three quarters of the Tutsi population within Rwanda, that is, 800,000 Tutsi, were killed within a hundred days, making this the fastest recorded genocide in history.

It was a political project: a desperate attempt by Hutu extremist elites to hold onto power by every possible means against the backdrop of a civil war that had been continuing for more than three years. The Rwandan Patriotic Front (RPF) rebels composed of Tutsi refugees had initiated the war in October 1990 on the premise that the Hutu government had continuously vacillated on negotiating a solution to the refugee issue. The violence escalated as the RPF advanced. The killing of Tutsi civilians within the country was designed to deter the RPF from advancing as also to root out suspected accomplices of the rebels. All Tutsi were considered the enemy. The assassination of the Hutu President Juvenal Habyarimana on the night of 6 April 1994 proved to be a decisive turning point in the war. The 'Provisional Government' dominated by Hutu extremists took over and blamed the RPF for the President's death. In Kigali, roadblocks and barriers went up within hours of the assassination as soldiers and members of the Presidential Guard fanned out to conduct house searches and kill Tutsi civilians. The genocide had begun.

In the following weeks, state elites were able to pull off an extraordinary level of mass mobilization. Hutu militia, local administrators, the gendarmerie were mobilized to fight what was in their view a war of self-defense against the Tutsi enemy. Hutu leaders at the center and from the provinces traveled into the hinterland to give inflammatory speeches and urge local Hutu to "work" harder to "clear the tall

trees".[1] The extremist radio RTLM (Radio Télévision Libre des Mille Collines) played on deep-seated fears in the collective Hutu psyche about the imminent return of a power hungry racial minority that would purportedly subject them to subservience as it had done in the pre colonial and colonial years. Defeat at the hands of the RPF would mean the undoing of the security and political gains made by the Hutu majority since the Hutu social revolution[2] a few years before independence. Some of the arguments, for instance, those relating to the non-indigenous origins and political threat posed by Tutsi, had been systematically popularized by Hutu elites during the First and Second Hutu Republics (1962-1973; 1973-1994). The propaganda assumed paranoid proportions fueled by the insecurities of a war the government appeared to be losing.

Huge numbers of ordinary Hutu were drawn into the genocidal project. Those who were already actively involved in the killings at the local level offered incentives, applied pressure and coercion, and influenced their friends, neighbors and family to join the war-fighting activities by helping to root out the enemy living amongst them. The international community failed to act in time.

Gitarama, the make shift capital of the interim government in the south, fell to the RPF in mid-June. This forced interim government leaders to flee to the northwest. Kigali was occupied by the RPF in early July. By mid-July, Gisenyi and Ruhengeri, the two provinces in the northwest were also captured by the RPF. Government leaders and almost two million Hutu refugees (a motley crowd comprised of militia members, terrified peasants, government soldiers, priests, civil servants, businessmen

[1] This reference to the 'tall trees' was a euphemism for targeting Tutsi who, according to a widely prevalent theory of racial difference, were said to be taller and thinner than Hutu. An imprecise marker of ethnic difference, this led to the harassment and deaths of many Hutu who matched that description.
[2] The social revolution of Hutu in 1959 led to the end of the Tutsi monarchy which had ruled Rwanda for four centuries. Mostly Tutsi elites but also hundreds of ordinary Tutsi were targeted for harassment and persecution and went into exile. The First Hutu Republic was inaugurated after independence in 1962.

and children) fled across the border into the Congo. Genocide ground to a halt with the declaration of victory by the RPF in July 1994.[3]

Here is the narrative of a seventy-four year old man who tried to explain his participation in the aftermath, "I regret what I did. […] I am ashamed, but what would you have done if you had been in my place? Either you took part in the massacre or else you were massacred yourself. So I took weapons and I defended the members of my tribe against the Tutsi."[4] Unraveling this man's explanation, Gérard Prunier notes, "He acknowledges that he killed (under duress) harmless people, and yet he agrees with the propaganda view…by mythifying them as aggressive enemies. If the notion of guilt presupposes a clear understanding of what one is doing at the time of the crime, then there were at that time in Rwanda…a lot of 'innocent murderers'."[5]

The RPF-dominated transitional government however emphasized the role of genocide ideology and suggested that people were willing executioners. It decided to use the criminal justice system to try all of the accused. RPF elites sometimes suggest that the number of perpetrators is as high as three million Hutu but this grossly overestimates the number of Hutu who are likely to have killed.[6] It also tends to deflect attention from the huge numbers of Hutu who have been killed in the span of these tumultuous years. About 30,000 Hutu were killed by their extremist co-ethnics because they were opposed to or tried actively to resist genocide.[7] Hundreds of cases

[3] There is a growing literature on the Rwandan genocide. For analyses of the extremist media, see Jean-Pierre Chretien et al. (2002); on the spatial and temporal dynamics of genocide, see Christian Davenport and Alan Stam (n.d) ; on the failure on the UN see Michael Barnett (2002); on micro-dynamics and individual participation, see Scott Straus (2006); on gender and participation in genocide, see African Rights (2004); for a cultural explanation, see Christopher C. Taylor (1999); for excellent overviews, see Gérard Prunier (1995); Alison Des Forges (1999); African Rights (1995). For accounts of ordinary Hutu who risked their lives to save Tutsi who sought refuge, see African Rights (2002).
[4] Gérard Prunier (1995), p247
[5] Gérard Prunier (1995), p246. He argues that sadistic killers seem to have been in a small minority. This observation is confirmed by Scott Straus (2006).
[6] Scott Straus (2004)
[7] Gérard Prunier (1995), p265

of summary executions, arbitrary killings and disappearances were reported in the RPF-controlled zones during the civil war.[8] At a minimum 25,000- 30,000 Hutu were killed by the RPF between April and August 1994[9] but the RPF has not been fully held to account for these crimes.

This dissertation focuses on the process of justice for genocide crimes that unfolded over a decade of transition. As we will see the reluctance of the RPF to account for crimes perpetrated by its soldiers will emerge as a significant concern for ordinary Hutu who must submit to the rigors of a criminal trials process. Despite reservations about RPF elites' moral authority to rule, the criminal trials produce on the part of those who have confessed the need to instrumentally 'surrender consent'. This is evidenced in their unwillingness to hold ruling elites accountable for their transgressions and a tendency to support the political status quo. This dissertation studies the causes of confession and its consequences for democratization and the transitional political regime.

[8] Amnesty International (1994, October 20)
[9] Alison Des Forges (1999)

CHAPTER ONE

GENOCIDE TRIALS AND AN ILLIBERAL POLITICAL CONTRACT

1.1 Introduction

It is widely accepted that the pursuit of retrospective justice, particularly criminal justice, is an "urgent task of democratization".[1] Trials are not only a legal obligation or moral duty but they help to lay the groundwork for new rules of the political game in transitional polities by signaling that the exercise of power cannot be capricious; it must be perpetually accountable to the law and its might constrained by rights-wielding citizens.

But how successfully are trials really able to produce government that is constrained? This question is often overlooked.[2] This dissertation is based on the premise that we need to identify the consequences of trials for transitional regimes (defined as the relationship between ruling elites and civil society[3]) in formation.

It makes two central arguments: First, trials have resulted in the production of political quiescence mainly through the production of increasing numbers of confessions. The bulk of the evidence in this dissertation shows how confessions are produced. I contend that the processes by which confessions are generated explain its consequent effect. I provide evidence for the finding that confessions produce an instrumental 'consent effect' in favor of ruling elites. This is a simulation of political loyalty to minimize the risk of indiscriminate retribution by the state. Second, I build

[1] Juan E. Mendez (1997), p.1
[2] In a recent volume on the rule of law in post-conflict societies, the authors note that the question of whether and how accountability proceedings actually contribute to building the rule of law is under-analyzed. See Jane Stromseth, David Wippman, and Rosa Brooks (2006), p253
[3] Adam Przeworski drawing on Guillermo O'Donnell's formulation; See Adam Przeworski (1992) , p123

on this finding to argue that the trials have served the interests of ruling elites by inhibiting the emergence of an active and critical citizenry. I offer inferential arguments about the diffusion of the consent-effect to a larger population and its uses for ruling elites who are widely believed to have committed gross violations of human rights and are perceived to possess little moral authority to govern. Ruling elites however are not punished for their transgressions because citizens are not willing to hold them accountable. The trials fail to produce government that is constrained and undermine a genuinely democratic transition.

1.2 Overview of the arguments

Individuals accused of genocide crimes fear that those who confess will be targeted for indiscriminate punishment by the government. However, when there is sufficient information available against them such that they will in all likelihood not be able to defend themselves at trial, it is in their best interest to produce a confession in the hope of a reduced sentence. Once they have confessed, these individuals are politically quiescent because of a need to minimize the risk that the government might defect from its offer of reduced sentences.[4]

One in every 31 people in the adult Hutu population at the time of genocide has confessed.[5] I infer that the production of political quiescence begins with those who

[4] They also fear the possibility of being rearrested. They could be rearrested if they are accused of any further infractions (real or contrived). The law allows individuals to be tried again should 'new facts' about their genocide cases appear that were not considered at the original trial. See for example, Article 20, Gacaca law (2007). There have been incidents where people have been re-arrested even after acquittal by the formal courts. See for example, documentation by Human Rights Watch (2002), p79 "In several cases persons tried, acquitted, and released were later arrested after public protest against the verdicts. Eight detainees acquitted in Butare in December 2000 were never released and were to be tried a second time on "new facts.""

[5] Ninety five thousand and sixty six people had confessed by the end of 2005. See US State Department (2006)
It is estimated that there were about 3 million adult Hutu in the population at the time of genocide. If we work with this figure, 95,000 implies 1 in every 31 Hutu in the adult population at the time of genocide has confessed. For a derivation of the figure of 3 million adult Hutu in the 1994 population, see Scott

have confessed and diffuses among a wider population proximate to the confessed. Ruling elites are not trusted and people do not rule out the possibility that those proximate to the confessed, such as their immediate family, may be implicated at any point and subjected to punishment.[6] Those proximate to the confessed also do not want to do anything that might jeopardize the prospects of reduced punishment for their family member who has confessed. The genocide trials have thus cast a chilling effect on a vast swathe of the adult Hutu population in Rwanda.

The trials have produced a restive and discontented population whose genuine grievances cannot be expressed or channeled institutionally; this is not a good sign for long term stability. The trials have entangled them in an illiberal political relationship with ruling elites in which the latter can extract compliance by wielding the threat of punishment. This is a population that is not likely to protest against transgressions by ruling elites; in fact, my data show that those who have confessed will tend to actively endorse the regime despite widespread cynicism about its legitimate authority to govern. Instead of a normative and substantive shift toward accountable government and active citizenship, the trials have produced compliant subjects dependent on ruling elites for assurances of reduced punishment.

Moreover, as long as ruling elites in Rwanda are able to prevent the emergence of a viable opposition, genocide trials have become a means to ensure that a significant portion of the Hutu population remains interested in the perpetuation of this regime to

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Straus (2004), fn 4 "According to the 1991 census, Rwanda had 2,813,232 citizens between 18 and 54. If, according to the census, 8.4% were Tutsi, then the adult Hutu population would have consisted of 2,576,920 persons."

[6] A report by an international human rights organization finds that a common sentiment among prisoners is that "all Hutu must go to prison". Penal Reform International (2004, May), p12 In my field research, I find that this sentiment is widespread not only in prisons but in the community as well. People complained about the insecurity created by the trials. Almost every family has someone who has been accused or imprisoned. These families pin flags of the ruling party and photographs of the President on their walls and take great care to appear compliant.

ensure that the benefits of reduced punishment continue to materialize. We know from the literature on authoritarian regimes that one of the causes of regime maintenance is the lack of politically viable alternatives.[7] As long as the government looks likely to endure and the continuation of the trials policy appears certain, I surmise that people remain invested in it to ensure their continued safety and survival. This has worked well for ruling elites during the transition period. It is imperative for ruling elites whose social base is limited to approximately 15% of the population to have ordinary Hutu (who comprise about 84% of the population) invested in the regime en masse.[8]

It is through the production of confessions that trials have generated a tacit contract between citizens and ruling elites in which the former concede to ruling elites the 'right to rule' (by refusing to hold it accountable) in return for guarantees against the possibility of indiscriminate punishment. I call this refusal to hold ruling elites accountable a 'consent-effect'. Instead of a genuinely democratic contract in which government is based on the consent of people who can choose to withdraw that consent or exercise their rights to challenge its actions, the trials in Rwanda have enabled a contractual relationship in which ruling elites may punish citizens and the latter consent to be ruled in order to evade or minimize (the threat of) punishment. This is a tacit and delicate contract but I want to argue in this dissertation that it is self-sustaining and stable given the wider repressive environment within which the trials take place, the absence of exogenous shocks (for example, international pressure, defeat in war, economic collapse) or the lack of internal shifts in the balance of power

[7] See Adam Przeworkski (1986), p52; See also Nicolas van de Walle (2002)

[8] A report by the Organization of African Unity (OAU) states "The tragic truth, as one observer puts it, is that, 'The government seems caught in a vicious cycle. It is perceived by the Hutu masses as an occupying force maintaining power through the use of arrest and intimidation. The jails, filled with people who are the sons, brothers, cousins, nephews, or fathers of most Rwandan Hutu, are a persistent reminder of this power. But from the government's perspective, without the arrests and the consequent intimidation, the Hutu masses may revolt against the minority government"" OAU report (2000) cited by Jeremy Sarkin (2001), p149

at the elite level. The bedrock assumption of the trials policy, "genocide ideology", has been used as a basis for new and repressive legislation. Ruling elites have used the "striking power"[9] of the law to discipline opposition elites, purge them from public life when necessary and stifle dissent in general. In addition, the co-optation of local Hutu into state structures at grassroots level allows RPF elites to depend on a class of local "allies" to politically regulate and stably govern the vast hinterland. I show how judges of the local trial courts are an important set of actors co-opted by the regime.

Trials also have other long term disciplining effects. For the adult Hutu male, prison or the prospect of prison has become a "thoroughly normative life event".[10] Thousands of arrests of predominantly adult Hutu males have left female-headed households[11] struggling to survive. Those convicted and released are denied employment in public services.[12] Research on the American criminal justice system for example demonstrates that there are long term effects (high unemployment, depletion of human capital and weaker communities) of high rates of incarceration on the African-American population.[13] The danger for Rwanda is that the trials produce in the short and medium run a stability born of an undemocratic contract but in the long run it could sow the seed for destabilization.

Scholars have noted that there is a "complex relationship between the uses of law to pursue transitional justice and the founding of new democracies."[14] They warn that

[9] Otto Kirchheimer (1961), p128
[10] I quote Bruce Western who was speaking on the topic of race, crime and incarceration in America on a panel on "Inequality and Criminal Justice", May 18, 2005, Stanford University. Lisa Trei (2005, May 25)
[11] Deaths during the civil war and genocide also account for many of the female-headed households.
[12] Article 15 Gacaca law (2007), Article 76 Gacaca law (2004)
[13] See, for example, David Garland ed. (2001) ; Bruce Western (2006)
[14] A. James McAdams (1997), p. xvi

trials should not be used in the event of procedural legal uncertainty,[15] a situation created by not adhering to fair trial standards. A prominent lawyer and human rights activist observed, "It is painfully clear that many injustices can be committed in the name of accountability. For example, in some cases, such as the attempts to use Rwanda's domestic jurisdiction to punish the crime of genocide, it is evident that the effort is bound to lead to a miscarriage of justice…The object should not be to discourage a state like Rwanda from prosecuting genocide altogether, but rather to encourage the new government to live up to its double obligation: to punish genocide and to do so within the bounds of due process of law."[16]

Many human rights organizations worried about this at the time the government began to implement gacaca courts as a policy solution.[17] These courts are a state-ized version of a customary institution for dispute resolution. "Gacaca" (justice on the grass) refers to community-based hearings in which people gathered on the grass and members of the community respected for their integrity mediated minor disputes between neighbors or members of a family. The political consequences of gacaca courts however were harder to anticipate. This dissertation is an attempt to explore how individuals respond when confronted with a political class that they fear while they simultaneously deal with the possibility that they may not be able to prove their innocence at trial. Given the massive scale on which the trials are implemented, the number of confessions and the resulting 'consent-effect' is significant producing real and durable consequences for the regime.

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[15] Even a minimalist view of the rule of law stresses the need for procedural certainty, that is, the consistent application of clear rules of the game free from ad hoc influences. See Gerhard Casper (2004)

[16] Juan E. Mendez (1997), p19

[17] Pronounced ga-cha-cha. For critiques of the idea of gacaca courts from a legal and human rights perspective, see Amnesty International (2002, December 17); Amnesty International (2002, June 19); Human Rights Watch (2003)

In the immediate aftermath of genocide, the transitional government made a case for going ahead with the trials based on a professed "state of exception."[18] The scale, intensity and brutality of genocide made justice an urgent issue. The government argued that ordinary Hutu had participated in genocide in such vast numbers because previous rounds of violence against Tutsi had gone unpunished. They believed it was necessary to prosecute all those involved in order to deter future crimes. When ordinary courts could not process the cases fast enough,[19] 12,103 gacaca courts[20] were introduced at community level in which ordinary people served as judges and witnesses. Government officials claimed that with all of the courts functioning simultaneously, the trials would be a temporary process lasting a few years. The government received support from international donors and legal organizations for a policy that would not have passed muster with the international community had it not been for the country's exceptional situation.

However, "states of exception" have generally launched countries onto highly uncertain legal terrain as it heightens executive power to deal with the unusually urgent situations at hand.[21] Rwanda is no exception. This dissertation explains how

[18] For an analysis of the political consequences of governments' recourse to "states of exception" in the western world, see Giorgio Agamben (2005)

[19] The website of the Government of Rwanda explains: "The sheer bulk of genocide suspects and cases due for trial has placed severe strain on Rwanda's criminal justice system which is already crippled by poor infrastructure and the death of professionals during the genocide. Rwanda's prisons are heavily congested, and the cost of feeding and clothing prisoners is a drain on the economy. The lack of an adequate number of prosecutors, judges, and lawyers to try cases exacerbates the already bad situation. At the present rate, it would take over 200 years if Rwanda was to rely on the conventional court system to deliver justice" http://www.gov.rw/government/genocidef.html

[20] The number 12, 103 includes both trial courts and appeal courts. See report by Domitilla Mukantaganzwa (October 2004), p9

[21] Agamben notes that "modern totalitarianism can be defined as the establishment, by means of the state of exception, of a legal civil war that allows for the physical elimination not only of political adversaries but of entire categories of citizens who for some reason cannot be integrated into the political system. Since then, the voluntary creation of a permanent state of emergency (though perhaps not declared in the technical sense) has become one of the essential practices of contemporary states, including democratic ones". Agamben offers the present day example of the US President's "military order" of November 13, 2001 which authorized "indefinite detention" and trial of non-citizens

Rwanda's ruling elites managed to get from implementing the trials on a mass scale to consolidating power over the course of a decade of transition without creating an active and engaged citizenry.

1.3 Confession: its causes and consequences

Official discourse presents the gacaca courts to a domestic and international audience as an instrument that facilitates reconciliation by restoring perpetrators of genocide to their communities after they have confessed and served commuted prison terms. It is hoped that this will transform individuals from perpetrators to good citizens and generate truth that repairs relationships between survivors and perpetrators who must live together again.[22] These arguments direct our attention to 'horizontal' exchanges among people.

My dissertation shows how power is transferred from citizens to state elites along a 'vertical' dimension as individuals directly 'contract' with the state by means of offering confessions while seeking guarantees that the state will not defect from its pledge of a reduced sentence and early release from prison. This binds the confessed and state elites in a tacit relationship where the former are not inclined to hold the latter accountable for any transgression while state elites reward them with reduced punishment. As long as there is no viable opposition at the elite level and current rulers appear solidly entrenched, these individuals are likely to actively support the current regime to avert the possibility of renewed arrest or further punishment.

The argument that confessions are implicated in power relationships has a sound theoretical basis in the literatures on religion, criminal law and psychotherapy.[23] The

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suspected of terrorist activities by "military commission" instead of the military tribunals that are provided for in the laws of war. See Giorgio Agamben (2005), pp2-3

[22] BBC interview excerpts (March 9, 2005)

[23] Saul M. Kassin and Gisli M. Gudjonsson (2004)

core idea is that confessions bind individuals into relationships of obedience toward a source of power. The Church's power over its flock, for example, derives from the notion that salvation requires complete submission to Church authority and cleansing of one's soul through confession.[24] Recent debates within the Catholic Church have focused on the implications of declining confessions on peoples' spiritual lives and their relationship with the Church.[25]

In a genealogy of state power, Foucault shows how the notion of "pastoral power" percolated into Greco-Roman understandings of state conceived on the lines of a "pastoral-political" model "treating the vast majority of men as a flock with a few as shepherds. They…established between them a series of complex, continuous and paradoxical relationships."[26] The confessional model is arguably a political model, binding actors into relationships of power, between rulers and the ruled, for example, premised on an exchange of obedience for security and freedom. Even confessing to a spouse or a friend produces complicit relationships. Confessions that expose intimate details about one's darkest deeds create a sense of extreme vulnerability, placing confessors at risk of betrayal or blackmail and reducing the likelihood of defecting from that relationship.[27]

One of the assumptions of this study is that individuals accused of genocide crimes will, as rational actors[28] view confession in exchange of reduced prison terms as a more attractive option than the alternative of remaining in prison in the hope of some

[24] See, for example, Amy Nelson Burnett (1991); See also Elena Brambilla (2003)
[25] Catholic Weekly News (2004, March 29); Jerry Filteau (2004, March 24); Ashley Fantz (2008, March 13)
[26] Michel Foucault's Tanner Lectures (1979) and Howison lectures (1980), cited in Nancy J. Holland (2002-2003)
[27] Jesse M. Bering and Todd K. Shackelford (2005); S.M. Kassin (2005)
[28] Scholars have used the rational actor assumption in their study of agents placed in vulnerable situations. See for example, a study of prisoners' strategies in their interactions among themselves and with prison authorities. Marek Kaminski (2004). For an analysis of peasants' resistance strategies, see James C. Scott (1985).

definitive proof of innocence because this latter is not easily forthcoming. This is regardless of the guilt or innocence of an actor *in reality*.[29] Even if we assume that a certain individual is in prison falsely accused of genocide charges, it is likely he will have a difficult time organizing a defense because gacaca law prohibits access to lawyers by the parties to a trial. Without prejudice to the eventual outcome of the trial, it is also very likely that this individual would remain incarcerated for a long time. Most prisoners have already spent a decade in prison waiting for their turn to respond to their accusers and be tried in court. The decision then to 'contract' with the state via confession or refrain from 'contracting' by means of refusal to confess is treated as analytically distinct from the question of innocence or guilt of the person concerned.

1.3.1 Causes of confession

The core argument about the causes of confession rests on three causal factors: (a) fear of indiscriminate punishment, stemming from a set of beliefs about the discriminatory rule by RPF elites in particular and the nature of rule by Tutsi elites in the distant past (b) information exposure (c) self-interest.

Individuals do not believe that new state elites in post-genocide Rwanda are trustworthy or possess the moral authority to rule. They fear indiscriminate punishment if they were to step up and incriminate themselves.[30] Therefore they 'hold

[29]During my research, there were some among the non-confessed who readily admitted they committed crimes but added that they hesitated to confess because they believed the government would respond with indiscriminate punishment. In contrast, there were some among the confessed who were declared innocent at trial. Between March and October 2005, trials were held for the first time processing 4162 cases of those who had confessed. Confessions notwithstanding, 12% of these cases ended in acquittals. Fondation Hirondelle (2006, January 10).

[30] A report by Penal Reform International (an NGO with a significant presence on the ground) corroborates this finding. The fear of indiscriminate punishment was widely prevalent. It quotes one of the accused who had confessed and was on provisional release: "When I was in prison with other prisoners, we agreed amongst ourselves not to tell the truth about what happened during the genocide

out' from confessing voluntarily despite viewing the reductions in punishment as an attractive option in theory and despite being incarcerated for years more numerous than that which they would have served under a reduced sentence. The post-genocide government has argued that confessions are evidence of ideological reform and a new commitment to the unity of Rwandans It refers to those who have not confessed as a population that should be quarantined for its "genocide ideology".[31] I find however that the majority of people from among the confessed as well as the non-confessed are neither eliminationist ideologues nor do they deny that genocide occurred. On the contrary, putting hundreds of thousands of people on trial for genocide crimes is likely to produce political benefits for the regime that are more concrete than elusive personal reform.[32]

I find that a decision to 'contract' by stepping forward with a confession is made when an individual knows he is over exposed (information against the accused accumulates by means of denunciations by those who have already confessed and testimony by witnesses) and the probability of his being proven innocent (regardless of 'true' innocence or guilt) is low.[33] Observation of trial proceedings and community-based ethnography show that denunciations and even witness testimony can be false. These manipulations are possible because of the procedural uncertainty of the gacaca courts and the relative autonomy of gacaca judges. The evidentiary rules in these courts are such that the balance of information available against the accused matters in

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when we were told about this possibility of benefiting from the release, since we thought it was a trick …to kill us" See Penal Reform International (2007, March), p28

[31] Even those who do not attend gacaca sessions are accused of harboring 'genocide ideology'. See for example, The New Times (2006, 29 September).

[32] There is much speculation about the original intentions of ruling elites. My main argument is that the effects of the trials are powerful and enable the consolidation of these elites. These may be most accurately characterized, to use a Foucauldian term, as 'instrument-effects' because the effects become instruments of power.

[33] In a research report, Penal Reform International also finds evidence of a "wait and see" attitude in those who participate in the gacaca process. Penal Reform International (2004, May), p7

determining innocence or guilt. Whether that information was generated by means of local manipulations is not (and often cannot be) determined. Moreover defendants have no access to legal counsel. As long as there are a number of people backing the same account against the accused and he is unable to put together a counter-coalition in his defense, it becomes increasingly likely that he will be found guilty. It is rational for that individual to confess because the penalties for being found guilty without having confessed are severe.

The three empirical chapters in this dissertation focus on the following: In chapter four, I present data from two prisons to show how confessions are produced. In chapter five, I show that betrayal confessions and witness testimonies are the two main sources of accumulating information against those who are accused. The law requires that if a confession is to be treated as valid, it must include denunciations of all alleged accomplices. Each confession thus generates denunciations against a number of additional people who also assess to what extent they are exposed and respond with time to the betrayal with confessions and denunciations of their own. This is mainly how the number of accused has gone up to 760,000 people, implicating almost 1 out of every 4 adult Hutu in the population at the time of genocide.[34] As more information accumulates against an accused individual, there is more pressure to confess.

The gacaca courts' community-based process that began in June 2002 is correlated with a spurt both in the numbers of those accused and in the number of confessions, despite incentives to plead guilty that have been written into the law since 1996.[35] My data reveal the role of witness testimonies, accusations and counter-accusations in

[34] UNDP (2007), p83. The number of perpetrators has been estimated by government officials sometimes to be as high as 3 million. Other estimates are not very specific but see Scott Straus who proposes a figure of 175,000- 210,000 perpetrators based on analysis of original data. Scott Straus (2004), p.93

[35] For instance, 65% of all confessions in 2002 were submitted after June when the gacaca pre-trial hearings started. Penal Reform International (2003), p5.

generating information on the accused. Some of this information could be true; other kinds of information generated in the courts are false. People form interest-based coalitions to weigh in for or against someone. Trial proceedings show that in the absence of hard evidence or expert legal counsel, truth claims are assessed by the number of people arrayed for or against the defendant. The more an individual is outnumbered by those testifying against him, the more unlikely it becomes that he can defend himself. This creates pressure on the accused to 'tip over' and confess. The trial data confirms the causal role of information exposure as found in the prison data.

In chapter six, I reinterpret the conventional understanding of state structures in Rwanda in order to show that judges are important local actors who enjoy spaces of autonomy that they can use to advance their own interests, engage in power struggles, secure the release of friends and relations and have local rivals eliminated from the political arena. State elites at the center tolerate[36] local manipulations because they need the cooperation of these key rural actors to project power into the hinterland as also to ensure that the courts continue to work at local level. However, the toleration of such manipulations around the trials compounded by the lack of legal counsel for the accused creates an environment of profound uncertainty about the processes involved that determine the outcomes of individual cases. In such an environment, the accused who are over exposed but have been holding out so far can be reasonably certain that they will not be able to defend themselves successfully. In such a situation, it is a rational risk-minimizing move to confess and hope to receive a reduced sentence than risk the much larger sentences for those who have not confessed but are proven guilty at trial.

[36] I draw on Sidney Tarrow's notion of three modes of governmental connection with public politics: prohibited, tolerated, and prescribed. See Sidney Tarrow (2001)

1.3.2 The consequences of confession

Once however an individual tips over and 'contracts' with the state expecting the state to follow through with the promised reductions, there occurs a instrumental realignment of interests of that individual with those in power, producing what I call a 'consent effect'. Without a third-party to enforce the 'contract' between the individual and state, there is no guarantee that the state would not defect from its side of the bargain. If defection by the state indeed occurs, the individual who has confessed to a crime of this magnitude has reason to fear that he has exposed himself to severe punishment determined arbitrarily by the state. If he was vulnerable after being accused of genocide, he becomes even more vulnerable after confessing to the crime. In order to ensure that the state keeps its side of the bargain, those who have confessed are inclined to 'surrender consent', unwilling to hold elites accountable, supporting them in their claims to power, and praising them publicly[37] despite believing they are discriminatory and lacking in moral authority. Chapter four presents evidence that confessions are correlated with the 'consent effect'.

Based solely upon an extrapolation from my findings about the instrumental production of consent on the part of those who have confessed, I make two inferential claims: First, the 'consent-effect' is also presumably found among those proximate to the confessed, such as immediate family members who fear for the security of their confessed relatives and also fear they could be implicated themselves. Political quiescence is thus diffused among a larger group of citizens. Second, I suggest that the large scale 'consent-effect' could have helped the RPF, a party with an ethnic base comprising 15% of the population, to win the crucial end-of-transition elections with

[37] The confessed are mobilized to advocate for the government's unity and reconciliation agenda. In a series of confessional performances for which they are transported out of prison and taken to communities, they sing and dance in praise of the government and urge others to confess. See for example, Penal Reform International (2003, September), p42

an overwhelming majority. Regime maintenance depends not only on political quiescence and everyday compliance produced by what Lisa Wedeen has called the politics of "as-if" (that is, citizens' public behavior "as if" the state was based on consent)[38] but also on validation by the popular vote at least for those regimes interested in managing their democratic credentials primarily for an international audience. The 'consent-effect' could be one among other reasons that citizens validated ruling elites in a private ballot, trading the vote in exchange of security guarantees in an election in which the RPF managed to thwart a viable opposition from forming and citizens fully expected it would win by all possible means.

In the Presidential elections of 2003, 96.6% of registered voters turned out in an election that Kagame won with 95% of the valid vote. Eighty three percent of the pro-Kagame vote was the Hutu vote.[39] My research shows that Hutu do not believe RPF elites have the moral authority to rule. What accounts for the massive pro-Kagame vote? Election observers have confirmed that election fraud certainly occurred, but their reports do not suggest that the scale or types of election fraud were significantly unusual as compared to elections elsewhere that are dominated by an incumbent candidate.[40] Not counting the Tutsi vote, the residual Hutu vote for Kagame appears too large to be explained by election fraud alone.

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[38] Lisa Wedeen (1999)

[39] I use a rough calculation to estimate what percentage of his victory resulted from Hutu votes. 95% of the vote translates into 3,544,777 votes. Assuming for a moment that every Tutsi voter supported Kagame (which may not have been the case in reality), I estimate that the number of votes Kagame received from Tutsi is 592,312 (that is, 15% of the total votes that he won). That would mean 2,952,465 votes were cast by Hutu, that is, 83% of the pro-Kagame vote was the Hutu vote. The Twa people comprise 1% of Rwanda's total population, so this figure of 83% presumably also includes some Twa votes.

[40] A CNN report (2003, August 26) notes that "despite reports of intimidation by both government authorities and opposition supporters, international observers said in general the election appeared to have gone smoothly"; A EU report (2003), p56 noted a "climate of intimidation and arrests" on election day, but added that "adequate measures were taken to ensure the secrecy of the vote" in 91.2% of the voting booths monitored by its observers; IFES-International Foundation for Election Systems (2003, October 4) In a Statement on Rwanda's Legislative Elections, IFES observers compared it to the flaws

In an election environment in which the choice of candidates was severely limited, a victory for the RPF and Kagame appeared on the ground as the only likely outcome.[41] Election observers across the board noted the absence of any viable opposition to Kagame. Certain about the prospect of a RPF government and with it, the continuation of gacaca, it is plausible that Hutu had little choice but to instrumentally 'surrender consent' exchanging their vote and signaling their loyalty for the security of reduced punishments, provisional releases, minimizing the very real risk, in their minds, of indiscriminate punishment.

At the time of the election in late 2003, 1 in every 46 Hutu in the adult population at the time of genocide had confessed. The electoral law mandated that those who had been accused could not register to vote.[42] While this disenfranchised a significant section of the electorate, it is plausible that those who were actually registered to vote- Hutu with fathers, sons, brothers, mothers and sisters who had confessed- transacted their consent for the security of their loved ones and to avoid being persecuted themselves. [43]

During my field research, ordinary Hutu would privately complain that there must have been a tampering of the vote because the Hutu former Prime Minister would surely have secured a higher percentage of the vote than the 3.62% that he did. They never doubted that the RPF would win.

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of the Presidential election: "failure to consistently apply established procedures for the management of ballot papers, the voting list, and voting room forms, left room for doubt as to the validity of the final tally"

[41] James Astill (2003, August 23) Of four Presidential candidates, one withdrew her name from the ballot before the election and another barely campaigned. The third candidate was the former Prime Minister in the transition government, a moderate Hutu, who had returned from exile to contest the elections. His campaign staff was arrested, he was mocked and threatened, his movements restricted, and media time limited; See also Adrian Blomfield (2003, 25 August)

[42] United States Department of State (2008)

[43] The gacaca law revised in 2007 mandates that the confessed will be deprived of their civil and political rights only for the duration of their sentence.

In the sections that follow, I undertake a brief survey of the transition period to show that despite swift economic recovery and a considerable emphasis on justice and rebuilding the rule of law, Rwanda has not made real headway in the direction of democratization. I argue that the reason for this is the undemocratic contract forged by the trials. I end this chapter with a review of the central arguments and a guide to the chapters that constitute the rest of this dissertation.

1.4 The rule of law in an uneven transition: 1994-2003

Rwanda has made rapid but uneven progress towards recovery from the devastation of the civil war that began in October 1990 and culminated in genocide between April and July 1994. The aftermath of genocide and military victory is often described as leaving Rwandans an "inheritance without a will"[44] but having defeated an army three times its size[45] that was also supported by French munitions, money and strategic advice,[46] the RPF was able to proceed quickly to form a Government of National Unity cobbling together the remnants of Hutu moderate factions under the banner of the RPF Declaration.[47] On October 1, 1994, the RPF organized a "triumphalist celebration" to commemorate the fourth anniversary of their attack on Rwanda which they perceived as the initial phase of the liberation of Rwanda.[48] With characteristic bluntness, Paul Kagame, military chief of the RPF, staked a powerful moral claim to legitimacy for his side, arguing they had put up a fight and stopped genocide while the international community had "stood around with its hands in its pockets."[49]

[44] Alice Karekezi Urusaro (2003)
[45] See Rene Lemarchand (1995), p8
[46] See, for example, Andrew Wallis (2006)
[47] Filip Reyntjens (1996)
[48] Catharine Newbury and David Newbury (1999), p293
[49] Philip Gourevitch quoting Kagame. See Philip Gourevitch (1998), p163

The RPF-dominated transition government focused on economic recovery, justice for genocide crimes and national security as priority goals. A long term vision for development "vision 2020" was formulated and foreign investment flows increased leading to a great thrust in infrastructure reconstruction, health and education sectors. For a whole year, representatives of various social sectors and political parties met each Saturday at the President's Office to develop policy solutions to various problems of governance and economic stabilization. These meetings produced, among other things, a program on fiscal and administrative decentralization and a policy on justice for genocide crimes.[50]

Two kinds of data convey a sense of the uneven progress: Since the end of transition in 2003, GDP growth rates averaged 5.6%.[51] In 2006, it required about 16 days to start a business in Rwanda. This was the same as the OECD average and much lower than the regional average of 62 days.[52] Against this record of achievement in the economic sphere, the 2007 Freedom House longitudinal survey on political rights and civil liberties reports that Rwanda has remained in the "Not Free" category over the entire duration of the transition. There was a gradual improvement in the civil liberties score (from 7 to 6 and then 5) within the "Not Free" range up until 2006. The score for political rights remained static till the end-of-transition Presidential and Parliamentary elections were organized in 2003 when it moved from 7 to 6 and remained there until 2006.[53]

[50] Village Urugwiro discussions, see Jean-Paul Kimonyo, Noel Twagiramungu and Christopher Kayumba (2004, December), pp14-15
[51] UNDP (2007), p5
[52] UNDP (2007),p78
[53] Freedom House's Longitudinal Score 1972-2007: 1-7 range with 1= maximum freedom and 7= least freedom. The survey shows that Rwanda has been categorized as "Not Free" for every year since 1972. See Freedom House (2007)

Recent literatures on institutions emphasize the central role of the "rule of law" in promoting both economic growth and democracy. Rwanda has invested heavily in rebuilding its judiciary, updating laws, training various levels of judicial personnel, and improving access to legal services. On the "rule of law" indicator of the World Bank Institute's governance indicators, Rwanda has improved by 31% since 1996.[54]

How has the "rule of law" in Rwanda produced a strong economic performance but has failed to create a significant democratic opening? The following section dissects the ambiguous "rule of law" concept and sets up an analytical framework within which to examine the linkages between law and (absence of) democratization in Rwanda. This is necessary because the rule of law is not just a "congeries of legal rules."[55] We need to know which of its constituent components has the most immediate consequences for democratization in order to understand the specific distortion in the case of Rwanda.

1.5 Rule of law and democracy building: The 'predator ruler' problem

In a typology of "rule of law" reforms, Thomas Carothers distinguishes between rewriting the laws (Type 1), capacity building and rationalization of procedures (Type 2) and increasing government subservience to the law (Type 3).[56] He suggests that new laws, technical changes or capacity building promote economic growth but are not sufficient conditions for ensuring government that is subject to checks from both citizens and organs of state. The literature on law and economics shows that the "rule of law" logic most relevant for economic growth is the enforcement capacity of the state, that is, how well it is able to protect property rights, enforce contracts, regulate

[54] UNDP (2007), p80
[55] Guillermo O'Donnell (2007), p123
[56] Thomas Carothers (1998, March-April)

the market, lower information and transaction costs by means of promoting public knowledge of a clear set of rules. [57]

The democracy building problem however is more appropriately conceptualized as the "predator ruler problem"[58] which asks how a ruler who has the power to enforce contracts and guarantee public order may become subject to limitations on its power. This is the idea that those who rule must be constrained in their exercise of power by means of institutional checks and balances and guarantees of rights to citizens such that the latter may be able to protest or punish ruling elites in the event of abuse of power.[59] Barry Weingast uses the example of 17th century England to demonstrate how limits on government emerged. The King enforced contracts, regulated public order and provided for security. The King was not restrained in his ability to extract rents to finance his wars until the Glorious Revolution when he became subservient to political limits enforced by peoples' representatives in Parliament. In this example, constrained government is the product of an elite pact or a stable domestic political contract at elite level.

A survey of the literature on democratization shows that the bulk of explanations for the emergence of restrained and accountable government relies on factors such as domestic "power shifts"- resulting from external pressures to changes in domestic political coalitions, control of resources in various institutional configurations-types of

[57] For a good summary of this literature, see Kenneth W. Dam (2006)
[58] See Barry Weingast (1997)
[59] Marc F. Plattner (1999) Plattner argues that in the history of consolidated democracies, the story of economic development and democracy building is one of simultaneous development and mutual reinforcement, not sequential development with one leading to the other. Establishing a causal story about development and democracy therefore is likely to be difficult.

party systems, Presidential versus Parliamentary systems, neo-patrimonial systems etc.[60]

It is consent theory however that powerfully frames the 'predator ruler' problem in terms of the power dynamics between citizens and state. With intellectual roots in the arguments of contract theorists as Hobbes and Locke, scholars from diverse intellectual traditions as Hannah Pitkin, Don Herzog and Margaret Levi[61] have used varieties of consent theory to probe the nature of political authority which is then used to explain both the state's expectation of obedience from its citizens and the willingness of citizens to comply with the law. The basic argument of consent theory is that individuals need the state to provide public goods such as order, security and enforcement of contracts; therefore they consent to be ruled by the state. By giving the state authority to govern, they agree to obey its laws but retain for themselves civil and political rights to hold the state accountable to their interests.

Rawls referred to the Hobbesian and Lockeian versions of consent theory as political, not metaphysical theories.[62] The idea of the contract was used as a heuristic device for developing a liberal notion of the bases of legitimate government. It distinguishes between authoritative states and non-authoritative states and claims that consent is a necessary condition for authoritative government.[63] Consent theory thus provides a metaphor for thinking about the bases of legitimate rule as also the limits to that rule. Voluntarily giving and withdrawing consent is one of the ways that the limits

[60] See for instance, Michael Bratton and Nicolas van de Walle (1997); Stephen Haggard and Robert R. Kaufman (1995); Scott Mainwaring, Guillermo O'Donnell, and J. Samuel Valenzuela, eds. (1992); Kidane Mengisteab and Cyril Daddieh, eds. (1999); Guillermo O'Donnell, Phillippe C. Schmitter, and Laurence Whitehead, eds. (1986); Jennifer A Widner ed. (1994)
[61] See for example, the political philosophy of Hannah Pitkin (1965); the historical approach of Don Herzog (1989); and the rational choice theory-based analytical narratives approach of Margaret Levi (1997)
[62] Cited in Deborah Baumgold (2005, September)
[63] Harry Beran (1997)

on state become 'self-enforcing' such that when the ruler indulges in 'fundamental transgressions', citizens solve their 'coordination problems' by exercising rights to free speech and association and penalize the ruler appropriately.[64]

This dissertation argues that the process of 'surrendering consent' facilitated by the justice process leads to a situation in which ordinary citizens question the moral authority of state elites to rule, yet are compelled to agree, in their own interest, to being ruled. They are therefore not willing to enforce limits on state elites. The confessed are not likely to protest or make claims on the state. Their survival depends on the discretion of state elites who may continue to extend to them or withdraw from them the benefit of reduced punishments. It is to ensure a continuous flow of such benefits that they retreat from holding ruling elites' accountable despite believing that the latter have committed serious abuses that they have yet to account for. For each individual who has confessed, there are others who are closely related to that person who are also compliant for fear of being accused themselves and out of concern for the vulnerable situation of their relative. It is because limits on the sovereign through citizens' ability to protest or punish are 'surrendered' away by means of an illiberal contract instead of being 'democratically contracted', that they are not 'self-enforcing', making a democratic transition difficult to materialize.

Consent theory has been critiqued because there were no historical moments of "reified" consent that brought states into existence and formalized an authoritative relationship between citizens and state. In fact, the histories of West European state formation show that states were built not on consent, but on "force and fraud, capital and coercion."[65] I argue however that there are historical moments when the idea of

[64] Barry Weingast (1997); Similar arguments by James Fearon in a talk titled "Self-enforcing democracy", Kellogg Institute, University of Notre Dame. August 29, 2007
[65] See for instance, Charles Tilly (1990)

the "contract" at the heart of consent theory is a useful diagnostic for assessing emergent power relationships between citizens and state elites.

Relevant examples are transitions after massive violence or regime collapse. Real world events in the last decade of the twentieth century have spawned a vast literature on state collapse, dysfunctional institutions, political transitions and state building.[66] The formation of a transition government or the making of a Constitution are key processes involving processes of 'contract-consent' where political elites who claim to represent various sections of the citizenry negotiate on the new rules of the political game that would both regulate political competition and limit the exercise of power by state elites by guarantees of political rights and civil liberties to citizens.

In the case of Rwanda, the 'contract-consent' elements in the elite pact that shaped the transition process were ambiguous. The RPF had secured power through military victory in July 1994, so the transition may be considered a non-negotiated one.[67] After its victory, however, it implemented the Arusha power-sharing agreement that had been negotiated in 1992-3 with the now-defeated government but many key provisions of Arusha were modified in practice by the RPF Declaration that preceded the Arusha accords in order of importance.[68] Also, the RPF-dominated government soon began to lose the support of Hutu moderates. A trend of attrition of prominent Hutu elites emerged five years into the transition. The Prime Minister, the Justice and Interior Ministers resigned from office in 1995. In this "first wave", diplomats, army leaders, senior civil servants and journalists went into exile; in a "second wave", the President and new Prime Minister both resigned in 2000. High-ranking officers, journalists once close to the RPF and even prominent genocide survivors went into exile. Certain

[66] See for instance, Stephanie Lawson (1993); Terrence Lyons and Ahmed I. Samatar (1995); I. William Zartman ed. (1995); Valerie Sperling ed (2000)
[67] Michael Bratton and Nicolas van de Walle (1997), p257
[68] See Filip Reyntjens (1996)

leaders of the RPF apparatus abroad also chose to resign.[69] Meanwhile, the rate of arrests within the country was as high as 1500 people per week in 1995[70] and 800 arrests per week in 1997.[71]

While the RPF has used a variety of repressive laws to stifle dissent, prevent elites from political claims-making on the basis of ethnicity, sometimes explicitly using genocide charges to discipline Hutu politicians, the gacaca trials have served them well in disciplining and extracting compliance from a vast section of the population. A democratic contract in which people can withdraw consent if elites are not accountable to them has been replaced by an illiberal tacit contract in which people do not want to hold elites accountable and give away the 'right to rule' in return for security benefits. When no political alternative is available, people actively invest in validating the regime to keep the security benefits flowing.

1.6 The politics of transitional justice: Surrendering consent

A Weberian conceptualization of the relationships between power and compliance helps to clarify the dynamics underlying the phenomenon of 'surrendering consent' identified in this dissertation. The following schema outlines Weber's three routes to power: (1) legitimate or "voluntary normative compliance, usually due to consensus on values or outcome"; (2) "utilitarian compliance…benefiting the individual or group"; and (3) "coercive compliance, based on compulsion by force, violence, and terror or the threat of them."[72]

Legitimacy need not be a necessary condition for stable domination.[73] Indeed Weber had suggested that not "every case of submissiveness to persons in positions of power

[69] Filip Reyntjens (2004)
[70] Human Rights Watch/International Federation for Human Rights (1995, April 18)
[71] Rene Lemarchand (1998), p44
[72] A representative taxonomy by Thomas M. Callaghy. See Lisa Wedeen (1999), p144
[73] Adam Przeworski (1986), p51

is primarily (or even at all) oriented to this belief. Loyalty may be hypocritically simulated by individuals or by whole groups on purely opportunistic grounds, or carried out in practice for reasons of material self-interest….People may submit from individual weakness and helplessness because there is no acceptable alternative."[74]

In Rwanda, the data suggest that ruling elites do not enjoy voluntary normative compliance from ordinary Hutu who believe that the RPF is responsible for numerous atrocities that have not been addressed. In their minds, the RPF represents the return of elite Tutsi rule along the lines of the pre-colonial and colonial periods; a time when ordinary Hutu and elite Tutsi had been bound together in dense patron-client relationships (involving cattle and land) from which both derived certain benefits but which were premised on material and ideational structures of inequality and subjugation of Hutu.[75] It is perhaps not accidental that the RPF retained over the transition period its Kinyarwanda name *Inkotanyi* ("tough warriors" or "those who do not give up until the goal is reached") which it had used during the civil war. It is a constant reminder of the victory of the RPF and signals the futility of resistance to its directives.[76] It is not surprising then that RPF elites are perceived as tough and discriminatory, a source of power that is arbitrary, yet on which they are dependant for their welfare and survival.

The phenomenon of 'surrendering consent' has parallels with the long standing tradition of clientship in Rwanda. The patron-client relationship now is tacit and political rather than social or economic although it could have long term material consequences for the client population. It is mutually beneficial involving the

[74] Max Weber, quoted by Adam Przeworski (1986), p51
[75] For an account of the social dynamics and consequences of patron-client relationships in Rwandan history, see Catharine Newbury (1993)
[76] Jean Hatzfeld's research corroborates this argument. With reference to the accused, a Hutu woman tells him that they carry with them "the burden of the vanquished". See Jean Hatzfeld (2005), p147

transaction of consent for reduced punishments, and within a wider repressive environment this relationship tends to be stable and self-regulating.

The primary vehicles for the production of consent are confessions which can be explained by a combination of two factors: individual opportunism and information exposure (through denunciations and witness testimony- true or false). People confess when they have been exposed. A confession therefore is an opportunistic move to secure the advantages of reduced punishment. In the gacaca courts however, if someone who has not confessed is found guilty at trial, it would mean incurring severe punishment under the terms of the gacaca law. Given the possible penalties involved, it is a risk minimizing strategy to confess in expectation of a reduced sentence.

In a second opportunistic move, those who have confessed find it in their interest to 'surrender consent' because of a fear of indiscriminate punishment arising from a set of prior beliefs about the nature of Tutsi rule and the discriminatory nature of RPF rule in particular. Conceding consent and becoming politically quiescent is a second-stage risk minimization strategy. Fear of arbitrary punishment and self-interest produce the 'consent-effect' *after* a decision is made to confess. With this move, the confessed become complicit in an illiberal compact with ruling elites. As the trials process continues and more information is generated by means of denunciations and betrayal confessions, more people are likely to 'tip over' and confess.[77]

1.7 Chapter organization

The next chapter provides a brief descriptive overview of the transition process to frame the analyses of the later chapters. It shows how ruling elites' emphasized the need for trials by drawing on a particular interpretation of the causes of genocide that

[77] Confessions have increased from 15000 in 1999 to 33000 in 2002 and 95066 in 2006. See for instance, fn 162.

is colored by their experiences of exile and persecution in recent history. The consolidation of power at elite level by various means allowed the RPF to translate their preferences for trials into policy. The chapter shows how the notion of "genocide ideology" has been used to justify the implementation of the trials, eliminate opposition from the political arena and to initiate repressive legislation to stifle dissent.

In chapter three, I describe the research design, sampling criteria, field methods, sites of data collection and the varieties of data that were collected over 18 months of field work that hewed closely to the evolution of the trials process. I show how the research process developed by means of both inductive and deductive engagement with field data.

Chapter four presents data from a sample of confessed and non-confessed prisoners in two prisons. After testing a number of hypotheses that could explain why some accused confess while others do not, I conclude that the accused tend to hold out from confessing until they feel they will not be able to defend themselves given the denunciations and testimonies that have accumulated against them. It is at this point that a decision is made to confess. I also find that despite the fact that both confessed and non-confessed fear ruling elites and believe the latter are illegitimate and discriminatory, the confessed do not want to hold Tutsi elites accountable for problems either in the distant or more immediate past. I call this a 'consent-effect': that is, conceding to ruling elites the right to rule by refusing to hold them to account.

Chapter five draws on data from six trials of those who have confessed. It makes two central points: first, it confirms the finding in the prisons that exposure and self-interest are major factors in the decision to confess. I show that betrayal confessions and witness testimonies are two main sources of information against an accused

individual. Second, I show that information exposure matters because it is the central mechanism by which guilt is determined in gacaca court processes that are otherwise fundamentally uncertain.

In chapter six, I show how state elites at the center depend on local "allies" to project power into the hinterland and politically regulate the population at the grassroots. I show that many of the judges in powerful positions on the gacaca panels are Hutu, members of the RPF and are drawn from among rural elites who occupy positions in local government structures. This suggests a process of co-optation at work that allows a regime dominated by Tutsi elites to stably govern the majority of the population who are Hutu living in rural areas. As long as these local elites comply in general with directives from above, state elites are willing to 'tolerate' spaces of relative autonomy at local level. I show how this allows judges to implicate local rivals in the genocide or secure the release of friends and family. These local manipulations around the gacaca courts create fundamental uncertainty in trial processes.

Chapter seven reviews the arguments of the dissertation and concludes with some theoretical and practical implications of this research project.

CHAPTER TWO

ELITE PREFERENCES, POLICY AND POWER

2.1. Introduction

It is generally accepted that state elites in Rwanda are able to extract compliance from citizens because state structures are extensive, designed for mobilization and leaders are able to identify and punish those who disobey orders. Following this logic, it has been argued that individuals comply (in this case, decide to confess) because they have been ordered to do so by their leaders and there are few options available except obedience.[78] This formulation suggests that people are like marionettes who complied with orders to kill and are now complying with orders to confess.[79] I argue however that the accused are rational actors, assessing their options and making difficult choices within the constraints of an uncertain legal environment and an increasingly certain political system.

This dissertation emphasizes the idea of 'instrument-effects', that is, the effects of confession serve the instruments of power. But this approach (as well as that which emphasizes the causal role of state orders and popular compliance) begs the question of what the aims of the ruling elites were when they introduced the trials. Much of what has been written on the intentions of ruling elites in Rwanda is speculation in the media and over the internet. But we can ask the following questions: What were the arguments they made in favor of the trials? How did they introduce gacaca as a policy

[78] Samantha Power (2003, January 16)

[79] On the apparently popular response to the unity and reconciliation initiatives, Philip Gourevitch observed, "The speed with which doctrines of genocide had been displaced by the order to live together was exhilarating, but it also served as an eerie reminder that Rwanda's old balance of authority and compliance remained perfectly intact. The system was useful for the overwhelming demands of the moment; you put in a new message, and—presto!—revolutionary change. But wasn't it only a change of complexion?" See Philip Gourevitch (1998), p318

solution when it had been rejected earlier in 1996? How were RPF elites able to steadily expand the scope and scale of the trials process?

These questions are not central to my inquiry but they are important in order to frame the analyses in the following chapters. In this chapter, therefore, I trace the evolution of a policy on justice for genocide crimes in broad brush strokes. After a brief background on the origins of the RPF, I describe how party elites' emphasis on trials draws on an interpretation of Rwandan history and their experiences of exile and persecution. I trace how the RPF consolidated power at elite level and how the debates on justice became less contentious as the party grew increasingly dominant. I show that the notion of "genocide ideology" has not been critically examined since the early years of the transition and is being used to demobilize opposition groups and suppress dissent. I use government reports, interviews with RPF elites and draw on available secondary literature. I conclude by suggesting that if we assume at a minimum that the goal of the RPF is to stay in power, it has been well served by the consequences of implementing the trials on a mass scale. It is difficult however to impute preferences to elites from the consequences of the trials, particularly when the evolution of the process was initially uncertain and its eventual outcomes would have been hard to predict at the outset.

2.2 Origins of the RPF

In 1959, the social revolution of Hutu had resulted in the exile of 40-70% of Rwanda's Tutsi population[80] and put an end to four centuries of Tutsi domination. Close to two million Tutsi lived in exile and were refused the right to return. Attempts by groups of Tutsi insurgents to fight their way back resulted in periodic massacres of Tutsi who

[80] Catherine Watson (1991), p5

still remained within the country.[81] A preliminary political formation of the Tutsi refugees, RANU,[82] was formed in 1979 in Kenya. It was renamed the RPF at its seventh congress in Uganda in 1987 where it emerged more focused on the issue of repatriation.

The party's operations were conducted clandestinely because of the rising persecution of Rwandan refugees in Uganda.[83] In 1982, thousands of Tutsi refugees had been pushed out of Uganda towards the border with Rwanda. The Hutu Republic in Rwanda refused to accept them, trapping almost 30,000 Tutsi refugees in a swampy strip of land where hundreds died of disease and starvation. This event has an important place in the collective memory of Tutsi refugees whose "consciousness was formed in exile." [84]An RPF cadre recalled the elegiac songs they used to sing, reliving that traumatic event, convinced there would be no escape from persecution unless they returned to the homeland.[85] Hundreds of Tutsi refugees volunteered to join Museveni's bush war in Uganda to topple the existing regime. They played an important role in Museveni's ultimate victory in Uganda and were rewarded with high positions in government. In due course of time however, rising nativist sentiment, continued persecution in Uganda, Museveni's refusal to extend citizenship rights to the refugees and the Rwandan government's vacillation on repatriation negotiations pushed the RPF to contemplate a return by force.[86]

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[81] Those stealth attacks led to what Bertrand Russell had called "the most horrible and systematic human massacre we have had occasion to witness since the extermination of the Jews by the Nazis". Cited in Linda Melvern (2000).
[82] Rwanda Alliance for National Unity (RANU) For a brief survey of the debates and coalitions within RANU, see Colin Waugh (2004)
[83] Colin Waugh (2004)
[84] Gourevitch quoting Tito Rutaremara, senior RPF statesman and presently Ombudsman; see Gourevitch (1998), p212
[85] RPF cadre, personal communication, Kigali July 2004
[86] Gourevitch quotes Kagame: "…the Ugandans were very suspicious of us. They didn't even appreciate our contribution, the sacrifices we had made. We were just Rwandans—and really this served us very well. It gave us a push, and it helped some weak people in Uganda feel that they had

The RPF strategy was to define itself as an inclusive nationalist party working toward the overthrow of the one-party dictatorship in Rwanda. The party had a well worked out political ideology well before the violence began unlike other rebel groups who worked out a political agenda in the course of fighting.[87] It attracted prominent Hutu dissidents of the regime in Rwanda who went into exile to join the party. RPF soldiers, cadres and top officials were disciplined, highly committed to the core goals of the party. RPF elites justified the invasion of Rwanda in October 1990 arguing that Tutsi refugees who wanted to return had been obstructed in their attempts to negotiate the issue of repatriation with the government of Rwanda[88]; they also suggested that theirs was a struggle for the 'liberation' of every Rwandan from the corrupt and dictatorial regime in power.[89]

2.3 Historical interpretation, causes of genocide and adequate correctives

RPF discourse suggests that of all the events that defined the party, the 'social revolution' occupies the most prominent place. Their analysis of the causes of

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solved a problem when we left" ; "…deep in our hearts and minds we knew that we belonged in Rwanda, and if they didn't want to resolve the problem politically, armed struggle would be the alternative." Philip Gourevitch (1998), pp214-216

[87] Colin Waugh quoting Tito Rutaremana, an elder statesman of the RPF and presently Ombudsman: see Colin Waugh (2004)

[88] In fact, the RPF initiated the civil war one month before phased repatriations were to begin. This is used by critics to argue that the RPF did not want to return as refugees but as political actors with a share of power. See Wm. Cyrus Reed (1996). Others have argued that as scapegoating of Rwandan refugees intensified in Uganda, RPF elites felt that there was perhaps no choice left but to return to Rwanda and if they failed to capitalize on the political weakness of Habyariamana, they would lose out on the opportunity presented to them by that historical moment. See Ogenga Otunnu (1999). RPF elites point to Habyarimana's questionable intentions and political doublespeak. In the early 90s, Habyariamana negotiated with the RPF and predicted that the "glass will spillover" if the refugees were to return. As early as 1980, he had argued it was difficult for over populated Rwanda to support the return of Tutsi refugees. See interview with the President in ORINFOR and the Office of the President (1980), p224. At the Arusha negotiations during the civil war, Habyariamana negotiated with the RPF on the one hand and dismissed the treaty document as a 'piece of paper' on the other.

[89] Post-victory, the RPF instituted a national holiday known as "Liberation Day", a day of speeches telecast over national television and radio, grand spectacles of festivities and parades and remembering heroes of the liberation struggle. This is separate from the commemoration of genocide in April of each year.

genocide draws on their interpretation of the effects of the 'social revolution' in 1959. Many top party leaders were young adults at that time. It turned out to be the beginning of a long history that would normalize institutionalized racism, anti-Tutsi propaganda and periodic massacres. In the RPF worldview, this was the starting point of processes that unfolded slowly but surely, preparing Hutu psychologically for the final denouement that was April 1994.[90] Party elites sometimes allude to 1959 as the beginning of genocide.

In RPF elites' speeches and government reports on genocide and its causes, there is great explanatory weight attached to the following: The first, 'genocide ideology' has never been specifically defined. It has been applied to a variety of situations in recent years: from sanctioning derogatory behavior against survivors[91], to suppressing political claims-making on the basis of ethnicity[92], critiques of gacaca[93], independent journalism[94], NGO activities[95] and opposition to government programs in general.[96] A senior member of the RPF explained, "Genocide ideology begins with divisionism.

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[90] "Genocide started a long time ago in 1959..from that time there was a culture of impunity"; "The genocide in Rwanda started in 1959, and continued in 1963, 1964, 1973, 1990, 1991, 1992, 1993 and came to an end in 1994" Office of the President of the Republic (1999, August), p58, p82

[91] Daniel Sabiiti (2006, August 8); Stevenson Mugisha (2007, April 7); Eleneus Akanga (2006, April 9)

[92] A popular party, MDR, was banned from contesting the 2003 transitional elections based on accusations of harboring "genocide ideology". See Human Rights Watch (2003a)

[93] Willy Mugenzi (2007, February 4)

[94] Lars Waldorf (2007); Reporters Sans Frontières (2006, August 3)

[95] Five NGOs, including a prominent Rwandan human rights organization LIPRODHOR (La Ligue Rwandaise pour la Promotion et la Défense des Droits de l'Homme) were accused of divisionism and forced to suspend its activities. Amnesty International (2005,January 10)

[96] Human Rights Watch reports on the findings of a Parliamentary Commission set up to investigate the prevalence of "genocide ideology" in the country: "The parliamentary commission, established following the late 2003 killing of several survivors of the 1994 genocide, gathered information from local officials and others in about three-quarters of the country. It concluded that a "genocide ideology" was widespread, found in six of the Rwanda's 12 provinces, at the national university, in a number of secondary schools and in many churches …. The commission interpreted "genocidal ideas," prohibited by law in Rwanda, so broadly as to include even dissent from government plans for consolidating land holdings" See Human Rights Watch (2004, July 2) ; See also report of the Parliamentary Commission of the Government of Rwanda (2004, June)

The word 'amacakubiri' describes it better than any word in the English language. It describes a situation where a well-integrated whole splits into two, and one part turns against the other. From here it is a dangerous slippery slope."[97] It was the first time that ordinary Hutu participated in attacks against Tutsi civilians. They stood in fields holding up banners demanding the transfer of power to Hutu.[98] Some survivors of 1959 recall their homes torched by people they knew. Anti-Tutsi propaganda began to be taught in schools and insinuated itself into development discourse.[99]

A related argument suggests that since the events of 1959, Hutu grew accustomed to a 'culture of impunity' because no punitive or deterrent action was taken against perpetrators of periodic massacres of Tutsi civilians. The RPF narrative thus interprets the genocide as the result of a specific mindset (divisionist at best, eliminationist at worst) that is widely shared by ordinary Hutu, who willingly participated because they believed that they could kill with impunity.[100] Within months of assuming power, the RPF began to make the case that the only adequate corrective was a criminal trials process for all those accused.

The process had to be designed to be both punitive and reformatory to transform those individuals from criminals to good citizens. If the accused stepped forward to confess their crimes, they would be educated in the duties of good citizenship, rewarded with reduced sentences and allowed to reintegrate into their community. Kagame noted, "People are not inherently bad…but they can be made bad. And they can be taught to be good. I think you can't give up on that—on such a person. They

[97] Interview with Tito Rutaremara, Ombudsman and senior statesman of the RPF Kigali, 2005
[98] David Newbury and Catharine Newbury (2000)
[99] Philip Verwimp (1999)
[100] For an interesting view on this, see Scott Straus (forthcoming) "The logical response to a "criminal population" is continued insecurity, which in turn justifies tight state security measures and restricted public discourse. By contrast, a view of the violence that stresses situational factors and enforcement mechanisms lessens the immediate danger"

can learn. I'm sure that every individual, somewhere in his plans, wants some peace, wants to progress in some way, even if he is an ordinary peasant. So if we can present the past to them and say, 'This was the past that caused all these problems for you, and this is the way to avoid that,' I think it changes their minds quite a bit. And I think some people can even benefit from being forgiven, being given another chance."[101] The RPF presented the trials as more of a reformatory quasi-religious process than judicial or political.[102] Its goals- to punish, reform and reconcile- were not presented as repressive "but above all pedagogic."[103]

2.4 Power and policy

The ability of the RPF to secure legislative sanction for a policy that would hold thousands of people[104] criminally liable was contingent on its dominant position in the transition government. It secured this dominance in the transitional legislature and executive within months of assuming power by means of various subtle manipulations of the laws that were supposed to govern the transition.

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[101] Philip Gourevitch (1998), p224, p313

[102] Jacques Fierens quoting an official press release on Domitille Mukantaganzwa, Executive Secretary at the National Service for Gacaca Jurisdictions who is reported to have stated "Gacaca is a more religious than political programme, as it aims at confession, pardon and reconciliation among Rwandans" See Jacques Fierens (2005), fn 77

[103] Francois Soudain (2005, February 20-26) (my translation from French)

[104] In the estimate of government leaders, the number of perpetrators possibly ranges between 1 and 3 million people. Gourevitch writes, "I once heard Kagame say that he suspected as many as a million people had participated directly or indirectly in the genocide….His advisor, Claude Dusaidi, put the number at 3 million, which amounted to proclaiming every other Rwandan Hutu guilty. Such claims- impossible to prove or disprove-struck many Rwandans and foreign observers as acts of intimidation, carefully calculated to place all Hutus under a cloud of suspicion, and this perception was hardened when a UN-sponsored effort to honor those Hutus, like Rusesabagina, was scuttled by infighting among cabinet ministers. Dusaidi insisted that Rwanda's outrageously packed prisons did not reflect the outrageousness of the crime that had been visited on the country. He said, "Pick any single film of the genocide, and just watch how they kill people. You'll find a group killing a person. So there are many more killers still walking the streets than we have in prison. The number in prison is a dot"" See Philip Gourevitch (1998), pp244-245.

Signaling that it would act in good faith, RPF elites implemented the Arusha power-sharing agreement that had been negotiated before the genocide with Habyarimana's ruling MRND and opposition parties within Rwanda. This appeared to obviate the need for a fresh round of political negotiations. But in a series of legal maneuvers, that have been likened to a 'creeping coup'[105] the RPF was able to achieve an outcome early on that would not be possible had there been open elections organized just after the civil war and genocide. The RPF was after all very much the party of Tutsi exiles that had toppled the government.

Three months after its victory, seven political parties[106] and the RPF signed a Protocol of Agreement in anticipation of setting up a transitional legislature. The Protocol committed these parties to adhere to the RPF declaration of July 1994. A 'fundamental law' passed by the transitional legislature a few months later placed the RPF declaration at the summit of a constitutional hierarchy that comprised the Constitution of 1991,[107] the Arusha Accords of 1993 and the RPF Declaration. For all practical purposes, then, it was the RPF Declaration that guided the transition process.[108]

The provisions of this document altered the terms agreed under the Arusha Accords. The largely ceremonial role of the President now assumed an executive form and was allocated to the RPF. Under the RPF Declaration, the office of Vice-President was created and combined with a ministerial portfolio. The functions of the Vice-President were not specified and the office was allocated to the RPF to be occupied by Kagame. The Declaration also allowed the RPF to allocate ministerial seats to itself that had

[105] Filip Reyntjens (1996), p8
[106] These parties were the remnants of the internal opposition to Habyarimana.
[107] Multi-party politics and formal separation of powers had been introduced under this Constitution after international and domestic pressures prevailed on Habyarimana.
[108] Filip Reyntjens (1996)

been reserved for the erstwhile ruling party MRND. These moves at constitutional engineering as well as the alliances it forged with smaller parties eager to bandwagon with the RPF for a share of power allowed the party to dominate both the executive and the legislative branches of government during the transition period.[109]

RPF elites have thus demonstrated a keen awareness of the political uses of law. They were able to quickly dominate the political arena which helped them push the trials as policy. They were not entirely unencumbered at this early stage however. They encountered a vigorous debate in the transitional legislature. There were other constraints, for instance, the need to ask for support from doubtful donor governments and critical international legal organizations. Yet the shape of the law reflects that although concessions were made by the government none of them were damaging to the core proposals of the RPF. In fact, by 1998 the RPF was more secure in its grip on power and this was reflected in the debates on the introduction of gacaca courts which were not particularly contentious.

2.5 Debates on the confession and guilty plea law (1996)

Two key points emerge from an evaluation of the debates that have been described as 'lengthy'[110] and sometimes 'combative'.[111] First, the RPF was already in a politically dominant position in the transitional legislature. The government was able to prevail in the face of criticism and questions on most counts. Majority opinion did stack up against the government position on some issues in which case the government response was to incorporate the proposals into the law without developing them substantially. Second, the emotionally charged context in the aftermath of genocide produced some proposals compared to which the views of the RPF appeared rather

[109] Filip Reyntjens (1996)
[110] Stef Vandeginste (1999), p9
[111] Francois Digneffe, Jacques Fierens et al. (2003)

moderate and restrained. The net result was that RPF elites were able to push through legislation that translated their preferences into policy.

The government was forced to address the issue of incorporating political massacres of Hutu moderates (itsembatsemba) alongside the mention of genocide (itsembabwoko) in the law.[112] The draft law tabled in the lower chamber of Parliament mentioned only genocide. At that time, it was a significant achievement, forcing the government to formally concede that genocide was one of multiple crimes that had been committed in Rwanda during that time.[113] Only 1 deputy proposed that the law also address crimes of war perpetrated during the four-year civil war.[114] Perhaps it was too sensitive a ground to tread given the RPF's involvement and it was not brought up again.

There was a lot of discussion on the issue of temporal jurisdiction (1 October 1990-31 December 1994). Some legislators argued that the law should cover the crimes of 1959 that they insisted constituted 'genocide'; others countered that the law should be extended beyond 1994 to include crimes committed after that date.[115] The RPF's arguments probably did not convince its critics but the government position that any crimes perpetrated after 31 December 1994 could be adjudicated under the penal code[116] eventually carried the day.[117] This removed from the table the contentious

[112] Francois Digneffe, Jacques Fierens et al. (2003), p55
[113] If RPF wants the primacy of genocide acknowledged at the expense of war crimes or massacres of Hutu- there are, on the other side, arguments about a double genocide or even the denial of genocide. The defense lawyer for Georges Rutanganda, the vice president of the Interahamwe militia argued before the ICTR that: "[i]t is not the Hutu who are guilty of this so-called genocide. We are convinced there was no genocide. It was a situation of mass killings in a state of war where everyone was killing their enemies…. There are a million people dead, but who are they? They are 800,000 Hutu and 200,000 Tutsi. Everyone was killing but the real victims are the Hutu. So, they have got this so-called genocide all wrong" quoted in Jeremy Sarkin (1999), p783, fn 114.
[114] Francois Digneffe, Jacques Fierens et al. (2003), p54
[115] This was a clear proposal to include the crimes committed by the RPF after assuming power.
[116] Francois Digneffe, Jacques Fierens et al. (2003), p59
[117] The RPF has continued to proffer the same argument over the years. Interview with Foreign Minister and senior RPF politician, Charles Murigande, Kigali 2005

question of accountability for massacres committed by RPF soldiers after their assumption of power.

Some legislators expressed discomfort with the government's insistence on community service (TIG- Travaux d'intérêts Générales[118]) as part of the proposed sentence reductions because Rwanda had a long history of forced labor imposed mostly on Hutu during the pre-colonial and colonial periods. The government dropped the TIG provision for the time being. TIG would resurface with a consent clause in the law on gacaca tribunals in 2001. At that time, however, it showed that the RPF-dominated government could be made to adjust and accommodate.[119] Another concession by the government was the inclusion of a provision on reparation for survivors, despite its initial argument that reparations could be arranged on an informal basis. The substance of reparations was not entered into in any detail.[120]

Sometimes there were no convincing arguments to allay legislators' concerns, who worried that incentives for confession would induce false admissions of guilt. They asked how the courts would make an accurate determination of guilt in the absence of a confession. This impasse was left unresolved and the debate moved on to other issues leaving the substance of the confession and guilty plea proposals intact.[121]

A few critiques of the law were so extreme that they made the government's arguments look reasonable in contrast. In a debate over terminology, certain legislators wanted to use the word "killers" or "genocidaires" for those in pre-trial detention instead of the word "accused". Some deputies argued that all Hutu should be punished, others pushed for the death penalty for all those proven guilty. The government

[118] There is a separate law governing the rules and procedures for TIG. For a report on TIG, see Penal Reform International (2007, March)
[119] Francois Digneffe, Jacques Fierens et al. (2003), p62
[120] Francois Digneffe, Jacques Fierens et al. (2003), p54
[121] Francois Digneffe, Jacques Fierens et al. (2003), p59

response was to outline the idea of individual responsibility and argued that it would not be realistic to put a million people to death. The government fended off accusations that the law was tantamount to amnesty and found itself on the defensive explaining the rationale for reconciliation.

The discussion on categorization of crimes showed how the fundamental assumptions that underpinned the trials were not questioned. Some legislators disputed the need for detailed distinctions between severities of crimes. The government found itself defending the need to deal with perpetrators differently: a distinction was made between leaders who had incited ordinary people to commit crimes and ordinary Hutu who had been pushed to kill.[122] This did not lead to a re-examination of the fundamental premise of the trials that had been posited by the RPF: that there were ideologized, willing perpetrators who needed to be punished.[123]

2.6 Power, Predicament, and Gacaca as policy solution

The RPF had strengthened its grip on power by the end of 1996. 15 of 22 cabinet directors, 16 of 19 director generals, 6 of the 11 prefects, 80% of burgomasters and 95% of all soldiers, gendarmes and police officers were Tutsi.[124] There were several assassinations of prominent Hutu followed by an exodus of Hutu politicians from the country. The RPF demonstrated its military prowess by crushing the insurgency

[122] Francois Digneffe, Jacques Fierens et al. (2003),p57

[123] A different argument has sometimes been used to justify punishing ordinary perpetrators that has little to do with "genocide ideology". An official report states, "The genocide and massacres is the government's offence because it is government which taught people the ideology used to get to those genocide and massacres….But on the other hand, the genocide and massacres have been the culprit's offence; because there is hatred between a citizen whose family member was killed by a neighbor and that neighbor. That citizen cannot logically think that it is government which is more responsible for what happened to him. Therefore, this proves that it would not be enough to punish such a crime at a high level"… Office of the President of the Republic (1999, August), pp5-6

[124] Gerard Prunier cited in Stef Vandeginste (1999), fn 55

mounted by Hutu rebels in the northwest and toppling the regime in neighboring Congo.

The RPF also began to prepare for the national elections that were still five years away. At a party congress in February 1998, there was a change of guard. Kagame, who had led the guerrilla war and was then Vice President, assumed Chairmanship of the party. The new mandate was to organize with the objective of winning the crucial end-of-transition national elections.[125] At a time when political parties were not allowed to organize at the local level, the RPF organized its cadres for "politics and mass mobilization". They were now assigned to all levels of the administrative hierarchy and focused on setting up party structures at cell level to identify pro-RPF candidates for the upcoming local elections.[126]

Justice continued to be a major concern: First, estimates suggested it would take 200 years to try all the accused. The Ministry of Justice was spending two thirds of its budget on food for the prison population.[127] Under the supervision of international legal associations, there were a series of legal reforms, including the establishment of a Bar Association, laws to regularize dossiers of thousands of Hutu in pre-trial detention[128] and the training of judicial defenders.[129] But this was not enough. By the end of 1999, there were almost 120,000 accused in prison.

A solution was needed to fast-track the process if the government was to be able to continue with the trials. The RPF turned to develop policy solutions on a variety of

[125] International Crisis Group (2001), fn 27
[126] International Crisis Group (2001), p7
[127] Jacques Fierens (2005), fn 13. "According to the former department of 'gacaca courts', within the Supreme Court, the state spent 2,000,000,000 Frw of its budget for 1998 solely on purchasing food for the detainees. This amount, even though it took up two-thirds of the budget of the Ministry of Justice, still had to be supplemented by a substantial contribution from the ICRC. In 1999, 1,500,000,000 Frw was spent on food, i.e. half the Ministry's budget of 3,800,000,000 Frw."
[128] Stef Vandeginste (1999), p10
[129] Those without a university law degree but entitled to assist and defend in courts.

issues. How the trials would continue was one of the main topics on which discussions were held every Saturday for a full year (May 1998-May 1999) at the President's home at Village Urugwiro. Proposals to try the gacaca experiment had been rejected in policy discussions as early as 1995.[130] The idea to implement gacaca tribunals resurfaced once again.

2.7 The discussions on gacaca

'Genocide ideology' and the 'culture of impunity' had become bedrock assumptions by this time. A truth commission had been ruled out in the early debates of 1995-6. A criminal trials process has been chosen as the best means to move toward truth, justice and reconciliation and a move away from this path was not on the agenda. The official report on the discussions on gacaca at Village Urugwiro presented the reasoning: "Usually, when you are punishing a crime, it is because you want people to be afraid of committing it. But in this case…it is not enough: the bad ideology which has been favored must be changed."[131] The report dismissed the arguments of those who were opposed to gacaca: "Some participants in the meeting, especially those who are specialized in law, found it difficult to welcome the idea of searching for other means through which the problems of justice resulting from the genocide and massacres could be solved because those means were different from those they were taught and using. Some were saying that the existing means (ordinary courts) could be used, so that trials for genocide and massacres could have been completed after three years, but they could not explain when they were requested to do so. They were adding that using other means to solve those problems was to minimize the genocide and

[130] Workshop on « La lutte contre I'impunite: dialogue pour une reconciliation nationale » held in Kigali. 31 October- 3 November 1995. Francois Digneffe, Jacques Fierens et al. (2003), 77
[131] Office of the President of the Republic (1999, August), p6

massacres because those who committed such a severe crime could not be tried by people who have not been taught law. The meeting found out that such ideas were resulting from the fact of wanting to protect the lawyers' profession and work and not being able to dissociate from what they have learnt and worked in so as to believe in other ideas."[132]

Discussions focused on the effectiveness of an informal traditional system, evaluating its shortcomings and debating ways of modifying it to meet some of the requirements of a criminal trials process. In a series of 'passionate'[133] donor debates, Belgium, supported by the European Commission, the Dutch and Swiss governments agreed to support the process despite their reservations. Ministry of Justice officials met with ambassadors, NGO workers and consulted legal scholars. With their inherent distrust of traditional mechanisms that strayed from international fair trial standards, international legal associations were able to exert significant pressure on the Rwandan government to ensure that gacaca trials approximated an adversarial, evidence-based and formal rules-oriented process as much as possible.[134] Ironically, this reinforced the harsher, punitive aspects of justice as compared to the softer, negotiable, informal aspects of traditional gacaca.[135]

Finally, the proposal to introduce a law on gacaca was tabled in a plenary session of Parliament. The questions were clarificatory rather than combative. Some deputies proposed that only genocide (itsembabwoko) be mentioned in the law and the reference to political massacres (itsembatsemba) be dropped. A majority of legislators were opposed to this and the government retained both terms. There were clarification questions on confession procedures (the new law proposed giving the accused an

[132] Office of the President of the Republic (1999, August), p61
[133] Francois Digneffe, Jacques Fierens et al. (2003), p78
[134] Mark Drumbl (2003)
[135] Mark Drumbl (2003), p129

opportunity to confess up until the point of trial), on the use of the word 'rape' in place of 'sexual torture', etc. Once again, there were more extreme proposals, such as holding parents co-responsible for atrocities perpetrated by minors.[136] The government's arguments against this made it appear reasonable and moderate.

The gacaca model was introduced in prisons in 1999 where it was used as a forum to encourage confessions, educate the accused about the law and allow the confessed to testify and denounce their accomplices. The organic law on gacaca took another two years to prepare, finally coming into effect in 2001.

2.8 Conclusion

The RPF has made a number of different arguments to justify the trials at different times that are not always consistent. Genocide ideology, willing executioners and the need for personal reform; culture of impunity and need for deterrence; survivors' demand for punitive justice are all arguments that can be contrasted with the government's concomitant position that ordinary perpetrators' were victims of coercion and misled by the propaganda of genocidal elites. Yet it has from the outset privileged punishment over reconciliation. The trials policy of 1996 was fundamentally punitive and did not mention reconciliation as one of its goals. The gacaca courts that followed were also significantly punitive but were presented as drawing on Rwandan tradition, capable of facilitating reconciliation, collective healing, justice, unity and even economic development.[137] The harsher aspects of the gacaca courts were apparent soon enough. Rwanda has turned into what Foucault would perhaps call the great "carceral archipelago,"[138] transferring thousands of

[136] Francois Digneffe, Jacques Fierens et al. (2003), 79-84
[137] Luc Huyse and Marc Salter eds. (2008), p54
[138] Michel Foucault (1995 [1975]), pp.297-298 Foucault refers here to the "whole range of punitive and disciplining institutions"… "the whole complex of the penal system that diffuses disciplinary techniques throughout the entire social body"

people between prisons, courtrooms and camps for community service while building state capacity to oversee and manage the entire process. Punishment or the threat of punishment saves the regime from using costly inducements or brutal repression to extract compliance. The underlying rationale for the trials, namely 'genocide ideology', has been useful in more ways than one. It has been used to justify new and more repressive laws.[139] It has also been used to delegitimize non-compliant Hutu elites and quarantine them from public life at the national level. It has been used to justify arrests of non-compliant local elites.

But the political problem for any party dominated by elites of the ethnic minority is the "permanently defined majority."[140] The core arguments of this dissertation suggest that once implemented, the trials have in turn produced power for ruling elites by keeping a vast swathe of the population quiescent and dependent on elites for reduced sentences.

[139] For example, the law against sectarianism and divisionism in 2001 and the restrictive press law of 2002. The terms of both laws are broad and ill defined, allowing officials to pursue its critics with criminal sanctions. Amnesty International notes that the government has used the law to silence critical journalists by accusing them of fomenting ethnic hatred or genocidal propaganda. See Amnesty International (2008) ; Reporters Sans Frontières (2003)
[140] Mahmood Mamdani (1996), p17.

CHAPTER THREE

RESEARCH DESIGN AND FIELD METHODS

3.1. Introduction

By October of 2002, 765 courts out of 12,103[141] had launched pre-trial hearings. These courts were into the trial phase by March 2005. The remaining courts followed in two subsequent phases.

The gacaca courts continued a judicial process that had begun earlier in 1996 when the RPF dominated transition government put in place the law on 'confessions and guilty plea'.[142] It offered incentives designed to encourage confessions from the accused and threatened severe penalties for those who insisted on their innocence but were later proven guilty. Painfully slow progress in the ordinary courts prompted the government to propose gacaca courts as a way to fast-track the cases of the 120,000 accused in prison. The argument was that these cases could be processed at a faster rate by twelve thousand community-based courts functioning simultaneously across the country. The gacaca law was introduced in 2001. It was revised in 2004 and again in 2007 but it has continued to use as its "cornerstone"[143] the incentives and sanctions introduced by its predecessor, the 'confessions and guilty plea' law.

[141] See report by Domitilla Mukantaganzwa (2004, October), p9; All twelve thousand courts were functional by 2005 even though the courts that began their work in later phases did not enter the trial phase until 2007.

[142] The Organic Law of 30 August 1996 on the Organization of the Prosecution of Offences Constituting the crime on Genocide or Crimes against Humanity. For a commentary on the law, see Daniel de Beer et al. (1997)

[143] For a commentary on the use of incentive-based confessions as the "cornerstone" of justice, see Penal Reform International (2003)

Using gacaca courts to try genocide crimes however represented an important rupture from the way the 'confession and guilty plea' law was implemented. A criminal trial process hitherto operated by legal professionals and contained within courtrooms in Kigali and provincial capitals now spilled over into the domain of local actors, exposed to the distortion of community-based processes. The gacaca law entitled these community-based courts to judicial independence, so the role of the state formally shifted to the margins. The National Service for Gacaca Jurisdictions (SNJG) was to be mostly concerned with infrastructural support, judges' training, and regular oversight. The certainties of the 1996 law carried over to gacaca, but introduced new actors and new uncertainties about how the community process would play out and whether lay judges would prove competent stewards of the criminal justice process.

Field research for this dissertation was conducted over a total of eighteen months between 2002 and 2005. I traced closely the organic evolution of the trials process over time. First, that helped to reveal how closely the political consolidation process and the trial process have evolved. Second, I examined the internal logic of the trials process. I collected data from relevant actors (accused, witnesses, judges, political elites) at each of the sites central to the operation of the gacaca process (prisons, community, gacaca trial court, government offices) and I traced the connective flows of power and resources between actors within and across those sites. This is important not only to understand how the process works and the structures within which the process unfolds, but also to understand how it produces outcomes that enable regime consolidation.

I describe my field research in more detail in the sections below. In order to provide some context to the gacaca process, I start with a description of the trajectory through which a typical case proceeds.

3.2 From accusation to verdict: a stylized sketch

I interviewed Alphonse[144] after he was sentenced in the gacaca court of Masaka sector in 2005. The timeline and details of his transition from accusation to arrest and verdict were similar to the others whose trials I observed in Masaka sector. The details were also similar to the accused whom I interviewed in prison. They had not faced a trial at the time of interview but the events they had experienced from the time they were accused up until their incarceration were the same. The trajectory from incarceration to trial and verdict is pre-determined by gacaca law and modified occasionally by Presidential decrees. [145]

Alphonse was accused in 1997. His neighbors had accused him of being part of a mob that killed a Tutsi child hiding in their home. The case against Alphonse was registered at the district police post. After being arrested and detained at the *cachot* for a couple of weeks, he was transferred to the main prison at province headquarters.

Contrary to what we might expect of a highly controlled prison context, Alphonse found himself in an environment saturated with various kinds of information. There were people from his community who had been arrested before him. Some of them had confessed and denounced others as was required under gacaca law. One of his cell mates possessed a radio. Alphonse reported that he listened closely to the news, particularly foreign news channels like the BBC and VOA from which he got the "real news" that he believed was not reported on the government owned Radio Rwanda. He listened when prison authorities routinely tried to familiarize the accused about the law and the incentives rewarding confession. Ministry of Justice officials also visited

[144] The names of people and places have been changed to ensure anonymity.
[145] The gacaca law did not have a provision for the temporary release of prisoners who had confessed. The Presidential decree of January 2003 made provisional releases possible. While this eased prison overcrowding to some extent, the releases ahead of the landmark transition elections raised questions about political opportunism. The projected release for 2003 was 49,376 prisoners. See Amnesty International (2003, April 29)

them to talk about the government's unity and reconciliation agenda. According to Alphonse, there was much discussion among prisoners about what the lectures meant. Prisoners scrutinized the words for possible codes and hidden meanings as they tried to assess what the government intended to do with them.[146]

He had some contact with the world outside of the prison. He went with his work group to fetch water, to construct the outer wall of the prison and his wife came to meet him once every three or four months. She brought him news of home and of the new accusations against him and others that had emerged at the gacaca hearings in their community.[147]

Alphonse confessed to category 2 crimes[148] in 2002. His options were clear under the law: If he did not confess but was found guilty, the sentence could range between 25-30 years. If he did not confess but was found innocent, he could be acquitted and released immediately. If he confessed and admitted guilt, the reduced sentence would range between 7-15 years[149] and there was an additional incentive in that the sentence could be commuted to public service (TIG). Alphonse was provisionally released in 2003. He was tried by a gacaca court in March 2005, found guilty and sentenced to 12 years. Under the law, he was required to spend only half of that time in prison (6 years). Since he had already spent 7 years in pre-trial detention, he did not return to prison. He had to serve out the remaining 5 years working on TIG.

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[146] This was also reported during my interviews with the accused who were still in prison.

[147] These were the pre-trial hearings where judges collected information from the community, recorded testimonies for and against each of the accused and sorted their dossiers according to the appropriate category of crime.

[148] Under the 2004 gacaca law, category 1 included those accused of organizing, planning, incitement to genocide and rape; category 2 included those accused of murder; category 3 included those who committed theft or arson.

[149] This is for category 2 crimes only under the 2004 version of the gacaca law.

There are minor variations in specific cases. For instance, there are those who are accused during the pre-trial gacaca hearings or even during the gacaca trial phase. In these cases, the time lag between accusation and trial can be less than for those arrested in the pre-gacaca years. In fact, many of those who are being accused at these later stages of the process may not be arrested because Rwandan prisons are heavily congested.[150] Besides, the government has gradually learnt that relentless arrests tend to create panic within communities. The accused nevertheless face the certainty of a prison term if found guilty at trial. **Figure 3.1** below maps the trajectories through which cases may proceed.

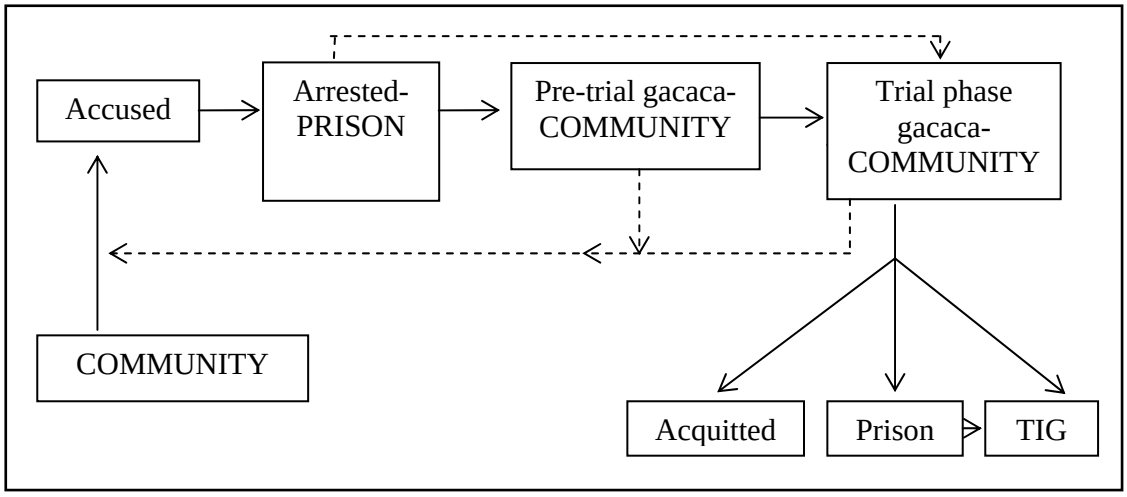

Figure 3. 1: Trajectories from accusation to trial

Overall, there is a continuous movement of people between communities and prison. The confessed are provisionally released; others have been recently accused and some among them arrested; still others return to prison after trial to serve out their sentences, while many are released for TIG.

[150] Human Rights Watch (2000)

3.3 Research design

3.3.1 Inductive beginnings

This project began as an inductive investigation into how the gacaca courts were working. My first visit was in the summer of 2002. Two hundred and fifty thousand lay judges had already been elected by their communities. There were heated debates among observers. Some human rights organizations believed the process was worth supporting given the urgency of delivering justice in Rwanda,[151] others dismissed gacaca as some sort of kangaroo court.[152] Some scholars hoped that would help to build democracy from the bottom up.[153] Yet others debated the possibility of healing and reconciliation in Rwanda.[154] Gacaca was cast as a novel grassroots experiment whose rules had been written into the law but the nature of its unfolding and outcomes were unknown.

I had some broad preliminary questions I wanted to pursue: What kinds of local dynamics played into the participatory nature of the trials process? How did the ruling elites control a process that was unfolding within communities? What were some of the social and political effects of the trials?

I conducted preliminary interviews with SNJG (National Service of Gacaca Jurisdictions) officials who had just settled into a small office in Kigali. Created as the sixth chamber of the Supreme Court, SNJG is the institution charged with setting up and implementing the gacaca tribunals on the ground. Many SNJG officials were members of the RPF and appeared genuinely committed to its vision of national unity and reconciliation. They explained that genocide was in their view the product of a

[151] RCN-Citizens' Network (2002, February) ; Fergus Kerrigan (2000).
[152] Amnesty International (2002, June 19)
[153] Peter Uvin (2003, April)
[154] Kenneth Roth and Alison Des Forges (2002, July)

particular political history. They argued that justice for genocide crimes would be a reformative and reconciliatory experience as perpetrators asked for forgiveness and were given a second chance at life. It was hoped that people would become participants in a new kind of non-partisan politics.

SNJG personnel had launched a large scale sensitization campaign at the local level to prepare people for the introduction of the tribunals. I observed these processes in two provinces. How did officials from Kigali interact with local communities? What was being said? How did ordinary people seem to respond? I spoke with some of the newly elected judges. Did they believe this would work? I took notes and collected the literature officials were using to "sensitize" the population about the gacaca courts.[155]

When I returned in early 2004, the pre-trial phase was in full swing in parts of the country. It was close to completion in some places. In Kigali, there were moves to introduce a revised version of the gacaca law and plan for the re-election of gacaca judges countrywide. The general feeling among people was that once political elites arrived at a decision, things would move fast at ground level. Fully functional SNJG offices had been set up in each of the provinces and in every district. A larger building had been built in Kigali to house SNJG operations at the centre. Operations had been streamlined and new infrastructure was in place.[156]

I tried to learn how various actors evaluated the gacaca courts in the pre-trial hearings phase. Privately, SNJG officials worried about places where people were

[155] These were small booklets with color pictures and simply worded explanations; posters with slogans on justice and reconciliation, songs and cartoon strips.
[156] The SNJG building now housed offices for directors in charge of various portfolios. There were copiers, phones, a small library, conference room, a team for translation of SNJG documents from Kinyarwanda into English and French, a number of secretaries, support staff and vehicles.

indifferent to or actively obstructing the work of the court. Sometimes people refused to testify or the panel of judges did not work well together but overall, SNJG officials presented a positive picture of communities working to build unity and reconciliation. In contrast, members of human rights NGOs presented anecdotal evidence about fines for non-participation and the involvement of grassroots government officials in compiling information on the accused where the community was not forthcoming with testimonies.

Were these stories indicative of a general trend of non-participation and growing fear within communities? I needed data for the duration of the process (2002-2004) which was not readily available at that time. There were however weekly and monthly reports drawn up by SNJG officials at the local level. These reports were available at SNJG offices at province level and in the districts.

I selected 20 cells (lowest administrative unit) spread across four sectors. Each sector was in a different province in the centre, west, south and north of the country. I chose the four provinces because it gave me a wide geographic spread across which I could track if there were significant similarities or differences. I selected these cells because they were all in the pre-trial hearings stage. I spent a month in each province, where I collected three types of data for each cell:

a. From these (mostly handwritten) reports, I compiled data on the number of sessions missed since the courts began working; reasons for missed sessions, including lack of quorum among judges as well as among the general population; figures for attendance over time.

b. I interviewed judges with the five most important positions on the bench and at least one other judge.[157] I asked them about the composition of the judges' panel to find out how many panels were inter-ethnic, what sort of issues created problems between judges, what sort of a relationship they shared outside of gacaca work, their economic position and social standing in their communities.

c. If there were survivors living in the selected cells, I would interview at least two of them depending on who was available and willing to respond to a request for an interview. I asked for their impression of the judges' work, to tell me if there had been incidents of intimidation or violence since gacaca started.

Putting the numbers from the SNJG reports on attendance and sessions held together with the qualitative information generated from these interviews, I found that things were not going well. Gacaca sessions were frequently cancelled.[158] The most commonly cited reason was festivals and burials, followed by lack of quorum, other community meetings, and finally inclement weather. Attendance was poor and falling over time.[159] Judges did not report problems among themselves along ethnic lines. Perhaps that was because most panels were dominated by Hutu.[160] The token Tutsi

[157] The five positions are those of the President of the court, two Vice-Presidents, and two Secretaries. They are called the coordinating committee of the bench. In each cell, I also interviewed one permanent judge who was not on the coordinating committee. There were originally 19 judges for every court but the gacaca law of 2004 reduced the total number of permanent judges to 9. There are also 5 non-permanent judges who fill in for a permanent judge who is not available on a given day. The gacaca law of 2007 further reduced the number of permanent judges per tribunal to 7.

[158] For example, in the five cells of Masaka sector, 34%, 55%, 41%, 47% and 34% of all scheduled sessions were missed.

[159] In the five cells of Masaka sector, the attendance for each of the cells for the first week and last week was : cell 1= 178 and 78; cell 2=120 and 60; cell 3=193 and 30; cell 4=210 and 60; cell 5=270 and 120

[160] In the five cells of Masaka sector, for example, all the judges on the coordinating committee were Hutu.

survivor among the judges often ended up with a non-permanent post. In a few places, Tutsi who had returned from exile after the genocide had important positions on the panels, such as president or secretary. In general, judges were eager to present a picture of their hard work and progress. Survivors, even those elected judges, hinted at local conspiracies, spoke of coalitions pitted against one another to implicate some and release others from prison. They felt they were closer to the truth about genocide than they were before gacaca started, but they also felt threatened and dispirited.[161] Going by survivors' accounts, there seemed to be a lot of maneuvering around the trials occurring within communities that SNJG officials, political elites, and the law enforcement apparatus seemed either unable to control or were unwilling to contain. In a rare case, even an SNJG local official appeared to be involved in the subterfuge around gacaca. He was in the police books for allegedly holding clandestine meetings at night to discourage Hutu from testifying. I observed that the entry in the police register was several months old but he was still carrying on with his job.

3.3.2 Moving towards the deductive stage

The gacaca machine was operating at very low cost given the scale of the project (judges worked without remuneration), generating huge numbers of accused (from 120,000 in 2000 to 760,000 in 2006), and producing a spurt in the number of

[161] In the cells in the northern part of the country, for example, one survivor who had testified against numerous people had asked local government officials to help him relocate to a different place under a different name. He feared there were local conspiracies underway to kill him. Another survivor reported she had served on the bench as a non-permanent member but was removed from her position after she was accused (falsely, she claimed) of having willing handed over her children to be killed by a mob during the genocide. Yet another survivor who was a non-permanent judge claimed she was too afraid to speak her mind. She even claimed she had been elected against her will in order to have a token presence of a survivor on the bench. In general, the accounts of survivors everywhere reflected their fear and anxiety surrounding gacaca. In 2003, the year before I conducted these interviews, four survivors had been killed in a single incident in the south. The case had been widely reported on the radio and the government was reprimanded for neglecting the needs of witnesses and survivors. Four years down the road, survivors continued to question what the government was doing to protect them. See for instance, Felly Kimenyi (2007, February 7)

confessions (33,000 in 2002 to 95,000 in 2005).[162] The accused largely tended to confess before they were brought to trial but there were also many accused who chose to confess during the trial.[163] I considered the following hypothesis: Confessions produced politically compliant individuals because those who had confessed counted heavily on the state to respond with the promised sentence reductions.

What sort of political relationships then are confessors implicated in with regard to the state? Do confessions produce a durable political effect? Was there a theoretically sound reason to expect more confessions as the gacaca process continued? The data certainly showed a rise in confessions over time. To answer these questions, I needed to know what caused people to confess in the first place.

I now had a set of specific research questions:

a. Why did many among the accused choose to confess?
b. What sort of politically consequential effect did confessions produce?
c. Was there a theoretically sound reason to expect more confessions as the trials continued?

Figure 3.2 below presents a conceptual map of the research questions.

[162] On the numbers of accused in 2000, see Stef Vandeginste who cites these figures from a report by the Ministry of Justice and compares them with a slightly higher figure of 123,000 accused which he derived from a report by Avocats Sans Frontières. Stef Vandeginste (1999), p12, fn 43. On the numbers of accused in 2006, see report by UNDP (2007), p77. On the figures for those who have confessed as of 2002, see Penal Reform International (2004, May), p11. On the figures of those confessed by the end of 2005, see US Department of State (2006)

[163] Data on the courts in the pilot phase show that 6145 people had confessed before they faced trial while 1921 had confessed at the moment of their own trial. National Service of Gacaca Jurisdictions (2007)

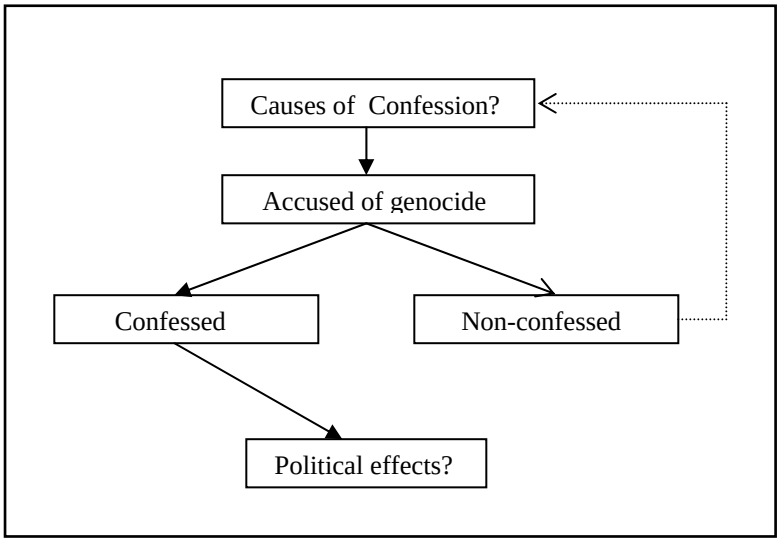

Figure 3.2: Mapping the research questions

3.4 Generating theory

3.4.1 Causes of confession: Survey among prisoners

Why do the accused, who have so far maintained they are innocent, decide to confess? I chose to conduct interviews with accused individuals who had confessed and also those who had not confessed. This would allow me variation on the outcomes (confession and non-confession) to test some theories that could account for the variation. I chose prisons as a site to control for an environment within which all the respondents had to make choices about confession. It would also allow me access to a finite population from among whom I could select a sample of both confessed and non-confessed individuals.

The research design in the prisons and the sampling methods are explained in detail in the next section of this chapter. In chapter four, I explain the theories I tested to account for confessions and then present my findings.

I state my findings briefly here: The accused are inclined to hold out from confessing as long as they possibly can. Although aware of the incentives rewarding confession, they do not trust the government. They fear that should they respond to the inducements and confess, they may be subjected to indiscriminate punishment instead of being rewarded with reduced sentences. However, they also know that they have been denounced by their co-accused and are aware that information has been building up steadily such that they are likely not to be able to defend themselves successfully at trial. The calculus now changes given that the law contains very high penalties for those judged guilty without having confessed. Confession suddenly begins to look like a better option than holding out and pleading innocence. It is at this point that the accused 'tip over' and surrender their confession. However, the same fear of indiscriminate punishment that prevented them from responding to the inducements in the first place continues to plague them. They believe they are even more vulnerable now that they have incriminated themselves. The 'consent effect' is a rational response by vulnerable individuals who need to transact their professed political loyalty in the hope that the promised sentence reductions will materialize. Figure 3.3 summarizes the findings below.

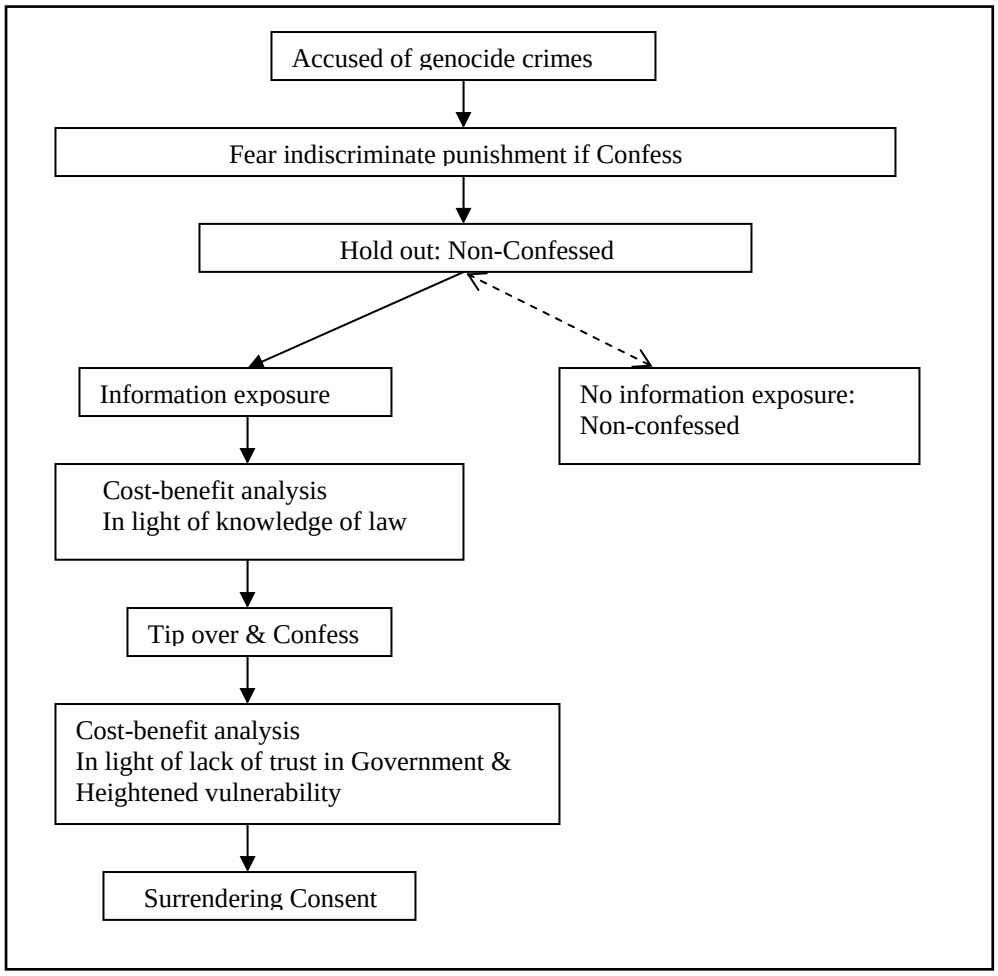

Figure 3.3: Mapping the findings

3.4.2 Testing the theory by means of causal process observation

I adopted a process tracing method in order to better specify the causal pathways suggested by the above theory and to generate expectations about additional relevant observable implications that should exist if the theory is to withstand scrutiny.[164]

[164] This is a positivist model of causal explanation and a way of subjecting the theory to standards of falsifiability. Alexander L. George and Andrew Bennett (2005)

A central finding upon which the causal argument rests is the role of information exposure. It does not matter whether this information is 'really' true or false, but simply that enough of it is out there such that the accused may not be able to defend himself successfully at trial. This information is generated by means of denunciations by friends and acquaintances from his community who have confessed. The law does not treat a confession as valid unless it contains denunciations of alleged accomplices. If the accused individual fears over-exposure, he responds with a confession of his own, betraying those who have denounced him in the process. This is a process of cascading "betrayal confessions"[165] generated by people known to each other.

I wanted to test if there was evidence of betrayal confessions among the accused who had confessed and had been provisionally released. This would allow me to double check the role of information exposure and the processes central to information exposure among a different sample of accused individuals at a location outside of the prison.

I used trial transcripts that I generated in the course of observing 6 gacaca trials in one community.[166] The transcripts include a total of 46 hours of trial testimony. The defendants at all of these trials had confessed. The data show that the testimony against the defendants is derived from those who had already confessed to committing crimes in addition to testimony by eye witnesses. If the defendant's confession was incomplete, for example, testimony from those who had confessed would prod the defendant into enlarging the scope of the confession he had proffered minutes earlier. Information produced in a confession could be linked to already existing information produced by way of somebody else's betrayal confession. I also interviewed some of the accused who had confessed and were provisionally released. They expressed

[165] I borrow a term used by Leigh Payne (2008)
[166] I call this Masaka sector. The gacaca trial court here had a caseload of 283 cases. (July 2005)

bitterness toward those who had denounced them. Some of them spoke openly about how the 'game was up' but that it had lifted a burden from their hearts.

But why should denunciations and increasing exposure (true or false) necessarily mean that the 'game was up'? For a theory about the calculus-changing role of information exposure to hold, there should be supporting evidence that the accused, once exposed, may not be able to mount a successful defense. Observation of trial proceedings show that in the absence of forensic, photographic or other kinds of concrete evidence, the availability of information against the accused from different sources was taken into account in making judgments about innocence or guilt. Information exposure mattered because at that point the outcome for an accused begins to look more certain. It reduced the inherent uncertainties of a process where judges are relatively autonomous, various kinds of local manipulations were possible, the accused did not have access to defense counsel and no other concrete evidence was available.

3.5 Data collection- sites and methods

3.5.1 Community:

Theoretically grounded ethnography served as an external validation of the causal processes that produce confessions. Ethnography is used in this dissertation not simply to contextualize the trials or to describe events that happened. The analytic goal is to specify more sharply the relevant structures and causal processes that the prison data suggested were relevant. Also, the answers to the questions I was interested in (how information was generated on the accused, how uncertainty was produced at the local level) could be found only by a long and deep immersion in everyday life within communities.

From my experience during the pre-trial hearings phase in 2004, it was clear that any fieldwork strategy that relied on brief forays into the community for interviews was not going to work. Respondents were guarded. They censored their speech and tended to repeat government slogans on unity and reconciliation. It was difficult to identify key players at the grassroots, distinguish the accused from the rest of the population, or understand the forces at play maneuvering around the trials. In an environment where people could not trust one another and feared being denounced, discussions happened in back rooms of bars, confined to small groups of trusted people, if at all.[167] Conflicts and power struggles could not be interpreted accurately without understanding the local relationships in which they were implicated. Fieldwork would involve living with people, living like them, on their home ground, and interacting with them over time.[168]

I returned to one of the communities in southern Rwanda that I had visited the year before. For purposes of anonymity, I will call it Masaka sector. I knew I would not be arriving as a complete stranger even though it would take time before people settled down with stable perceptions about me. That I was an Indian woman studying in America and conducting research in Rwanda caused some confusion and a great deal of interest, giving me many opportunities to introduce myself, make small talk, and absorb informal gossip and information about local residents. Each encounter was an

[167] I could not directly participate in these hushed discussions among close friends but I observed that they took place. I could participate in numerous informal discussions. These happened commonly in the local bars. People relaxed with their drinks and there were moments where people spoke freely to me and then retreated if they had said too much. Sometimes, they would argue among themselves without involving me directly and my interpreter would fill in the details when we were alone. After a few months, my host family began to relax around my presence. Discussions would flow freely on intermittent occasions around the dinner table. These were insightful moments but would not last long. On one occasion, I was informed gently by my interpreter that the family felt they had said too much and I should be careful because they had spoken trustingly.

[168] John Van Maanen (1988)

occasion to share a few drinks as is customary and field questions while my interpreter[169] and I were studied at close quarters.

My host was a Hutu man whose brother had been accused of genocide, arrested and later died in prison. We ate our meals with the family,[170] went to market days and were invited to baptisms. From relationships initially mediated by my host, I began to develop independent relationships with a variety of local actors- gacaca judges, members of locally dominant families, those who held leadership positions at the grassroots. All conversations and interviews were conducted in Kinyarwanda as the rural population was not conversant with French. Every encounter was a three-way dialog with my interpreter translating simultaneously between me and the person we were talking to. I spent a month preparing my interpreter for the community-based research. It was crucial to develop a mutual understanding of our individual expectations and behaviors in the field.

I began to attend the weekly trials in the gacaca court (with official permission from the SNJG) discussing the cases with survivors and members of the audience during breaks. I lingered after the sessions to talk with the judges. These conversations usually ended up in the local bars and people debated back and forth. Sometimes, the façade of normalcy would give way to opinions and emotions expressed in unguarded moments, but these windows were quickly shut as people realized perhaps they had said too much.[171] But it was information that was useful and I recorded the details of

[169] Hutu, male, recently graduated from college

[170] My host had two spare rooms where he would store bags of coffee during harvest season. He rented the rooms out to me and my interpreter for the duration of our stay.

[171] When a discussion (at which I was present but in which I was not directly involved) became intense and heated, I would initially ask my interpreter for feedback on the spot. I realized soon that this tended to disturb the flow of conversation. It was as if people suddenly realized that I was present and the conversation would slow down. After that, I began to simply absorb what was happening and pick up the general thrust of the arguments. I had enough of a basic vocabulary to be able to do that. I later asked my interpreter to explain what had transpired and who said what exactly. However, in discussions

the conversations and the day's events in my notebook. It gave me questions to pursue later as I verified pieces of data from different local sources.

Gacaca had created a situation in which there was a high premium on every piece of information. Information (true or false) could be used to have someone arrested, ensure someone was released, remove a judge from his post, delegitimize a witness and manipulate the contents of a dossier. My relationship to local actors was key to getting access to various kinds of information; my understanding of relationships between relevant actors was critical in being able to distinguish between information and (sometimes deliberate) misinformation, revealing the contours of local coalitions and their power struggles. Self-consciousness about my 'positionality' with respect to specific actors was critical and prevented me from making serious mistakes in the field. During a particularly contentious power struggle between judges in the trial court, for example, there was an attempt by one of the parties to instrumentalize my presence towards their own ends by specifically inviting me into a closed gathering (which was highly unusual) and passing on rumors and misinformation about a judge that (I believed) they hoped I would unwittingly transmit as I asked questions and spoke to others. In order to be effective in the field, I needed to build 'trustful' relationships but I also realized that I needed to always interrogate why particular respondents chose to speak to me and why they said the things they said.

At trials and in the course of my own field work, it was evident that whole truths could not be known. Testimonies and counter-testimonies often provided multiple alternate accounts of events during trial proceedings. Like the judges who did their best to string together the most plausible account of what likely happened as they sat

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in which I participated actively, I used my interpreter to translate simultaneously between me and whoever I was speaking to.

in judgment over a case, my ethnography yielded "partial truths"[172] by means of logical reconstructions of multiple narratives, cross-checking vital links and moving towards the most stable, consistent explanation possible.

I did not use a tape recorder for the interviews or trial proceedings because that would have detracted from the informality and embeddedness of my presence in the community. My interpreter noted the responses by hand as he simultaneously mediated between me and the respondent in English and Kinyarwanda. Trial proceedings were also transcribed by hand in Kinyarwanda and later translated into English to generate trial transcripts. Recording the testimonies word for word was not difficult. The proceedings were painstakingly slow as the secretary of the trial court noted down the testimonies in the court register and the witnesses and others spoke haltingly to allow him to write. This gave my interpreter ample time to record those simultaneously.

Experiencing the ebb and flow of events over time- both routine and accidental- was in itself revelatory. Accidents (such as a sudden public dispute between survivors and judges during the election of judges) exposed deeper conflicts not normally visible through thick layers of an apparent everyday normality. These occasions allowed (generally well disguised) emotions to rise to the surface. Emotions contained within them a causal logic: anger for example, was underpinned by a 'reason', it was directed towards a (usually powerful) 'object', and recalled events that occurred in which some had lost and others had gained. It linked events of the present with events that had occurred earlier helping the researcher to develop a sense of structures of power and social processes at work. For example, why did people react the way they did when soldiers in plain clothes arrived during the judges' elections, stood at a distance of

[172] James Clifford and George E. Marcus eds. (1986), p24

several feet from people who had gathered to vote, while a district official nullified the re-election of a judge accused of genocide crimes? Why did other judges sit stiff and poker faced in public appearing almost nonchalant as this happened, while a couple of other judges erupted into barely suppressed outrage in private?

Participating in the routines of local life also helped me to discover how ordinary people related and responded to government. Like many others who walked an hour to get to the district office with their petitions and problems, I too walked to secure permission to continue with my research at regular intervals. I observed how often district elites summoned local leaders for meetings, what kinds of incidents occasioned a visit from the district authorities, the structures through which the district projected power into the hinterland and the spaces for autonomy and control at the local level. Finally, an immersion into life at the local level allowed me to understand experientially the meanings of membership in that society, particularly how life is lived and survived as the trials atomize local society, disintegrate families and friendships, induce powerlessness and desperation among people.

3.5.2 Prisons

I was able to secure the required permits from the Ministry of Justice and the Ministry of Internal Security to conduct interviews at 4 prisons which I selected because it would be logistically convenient to travel to and live in those areas in which the prisons were located. I decided to start with the prisons PCK and K in Kigali.

I had to find a way around three sampling problems at this point: First, the names in the registers were not tagged with the category of crime each prisoner was accused of committing. I was interested in sampling only from category 2, that is, individuals

accused of killing or accused of being accessories to killing because those in category 2 comprised the bulk (61.6%) of the accused.[173]

Second, I was interested in the causes of confession, so I wanted my sample of confessed and non-confessed prisoners to include only those who not yet faced a trial. This would ensure that their responses would not be distorted by the legal consequences (verdict) of the choice (confession) that some had made and others had not.[174] Finally, prison registers contained the names of all the accused without noting whether the said person had confessed or not. I had to find a way of stratifying the prison population into the sub-populations I was interested in studying.

I sampled by means of a random multi-stage process using the same logic at each prison: At prison PCK, for example, the prison population of those accused of genocide crimes was 3400. I randomly sampled 300 names by choosing every 10th name from the prison registers. From this sample of 300, I needed to know which prisoners were in category 2. From within the sample of category 2 accused, I needed information based on which I could first, identify all those who had not been tried and second, stratify the sample between those who had confessed and not those had not confessed.

[173] National Service of Gacaca Jurisdictions (2006)

[174] This should also account for those who ultimately confess at the trial because these confessions are typically produced in the course of the testimonies generated during the trial and before the judges retire to deliberate on the verdict. The gacaca law does not reward confessions after the verdict is announced. In the trials that I observed, judges would begin by listing the accusations against the defendant and then give the latter the opportunity to contest or accept the charges. This could be an opportunity for those who have been holding out to 'give in' and confess. During the trial there are other windows of opportunity for the accused to confess. For example, in one of the trials that I observed, the accused started out with an incomplete confession and made a fuller and more detailed admission only as the trial progressed and new information came to light. Incomplete confessions run the risk of being rejected and the accused are then treated as if they have not confessed. The penalties are significantly higher in this case. The accused therefore have every incentive to confess before the testimonies come to a close and the judges come back with a verdict.

Based on secondary information, I knew that almost two thirds of those accused were in category 2, so I expected to end up with a sample of 200 individuals in category 2. I also knew from aggregate prison data at the time of this research, that 1 in every 3 accused had confessed at prison PCK. I expected therefore, that my sample of 200 category 2 accused should give me a list of confessed (approximately 1/3 * 200) and non-confessed (approximately 2/3 * 200).

I handed my original sample of 300 names to the leader of gacaca for prisoners. This individual (who had confessed) led prison sessions regularly organized for those who decided to confess in prison and wanted their testimonies recorded. He had worked in this capacity for a few years and I believed he would know or could find out more accurately than anyone else which of the individuals in my sample had confessed or not, been sentenced or not. He could help me generate the sample I needed. Much as I had expected in terms of proportions, I ended up with a sample of 60 confessed and 120 non-confessed prisoners.[175]

To randomize further from these stratified lists, I selected every third name from the list of confessed and every sixth name from the list of con-confessed to generate a reduced sample of 20 confessed and 20 non-confessed prisoners. I used this list from which to interview respondents. In order to double-check the accuracy of the information provided by the prison leader, I requested respondents to confirm their status (category of crime, confessed or not, waiting for trial) with me before proceeding with the interview. I followed the same procedures in prison K.

[175] 120 names were eliminated from the original sample of 300 because they were in categories 1 or 3, had been sentenced already or could not be identified or located by the prison leader.

I conducted 38 interviews before I was forced to terminate this part of the research because of interference by prison authorities.[176] I had interviewed 18 confessed and 20 non-confessed prisoners. There were 22 respondents from prison PCK and 16 respondents from prison K. Only 5 respondents out of a total of 38 were female and they were all from prison PCK. There were no female inmates at prison K. The average age for both the confessed and the non-confessed was 40 years.

Despite the limited data, I have confidence in my findings. The sample was representative of the distribution of confessed and non-confessed within the prison population. The sample was randomized to avoid bias as far as possible.[177] The questionnaire was designed to double-check responses.[178] It was translated from

[176] I had moved on to the third prison outside of Kigali to continue the interviews. The prison director there wanted a copy of my questionnaire and insisted they would have a policeman sit in on the interviews. Until that point, I had not been asked for my questionnaire either when I applied for the permits or in the two prisons where I had just completed the interviews. At prisons PCK and K, the interviews had been held in a private room in a corner of the courtyard outside of the main prison complex. In this third prison however, I told the director that I would give him a document that conveyed the set of broad themes that I was interested in pursuing such as gacaca and reconciliation etc. He read it and told me bluntly not to return to the prison. I was informed that the week prior to my arrival, another researcher had been arrested for asking inappropriate questions. Hence, the interviews with prisoners were terminated.

[177] First, the sample reflects a regional bias in that it is populated by respondents from Kigali and its environs. I try to counteract that by testing the findings (role of information and self-interest) on the causes of confession among a different sample of accused individuals during my trial observations in a different province. Second, the sample is also dominated by male respondents. This makes it representative of the prison population at large. However there could be attitudinal and other differences along the lines of gender but I am not certain what they might be. Finally, I interviewed only those people who could be located by the leader of prison gacaca from my original list. Given that this original list was generated randomly from the prison registers, and in addition, I selected my final respondents randomly from the list of identified prisoners handed to me by the leader of prison gacaca, I do not think that the unavoidable intervention of the prison gacaca leader made a significant difference in sample selection.

[178] For instance, on the issue of crimes committed by the RPF, I asked respondents if they believed that the RPF had attempted to kill all Hutu. I did not use the word "genocide" in this question. The responses were registered on a scale that ranged from strongly agree to strongly disagree and I always asked the respondents to explain why they agreed or disagreed. I followed up with a second question: "In your opinion, who committed genocide?" The possible answers were (a) Interahamwe/Hutu militia (b) RPF (c) both Interahamwe and RPF (d) none of them (e) other?
If a respondent said that the RPF had killed many Hutu but disagreed that the RPF attempted to kill everyone who was Hutu and then said in response to the follow up question that the RPF had committed genocide, I would ask for a clarification. I found that some of the respondents did not always understand the exact meaning of the word "genocide" (or "jenoside" in Kinyarwanda). They confused it

English into Kinyarwanda and translated back into English to check if the original questions were rendered accurately into the local language.[179] I spent a month with my interpreter explaining the questions to him, working on the nuances of the local language to fine-tune the questionnaire and clarifying how I wanted the interviews to be conducted. We used a conversational free-flowing style with my respondents. The interview was guided by the semi-structured questionnaire and generated a lot of narrative material through the use of open-ended questions to help me understand the argumentative logic of the yes/no responses to other questions. The interview was conducted in Kinyarwanda. The process involved a three-way conversation to ensure I was involved closely and able to follow what was happening during the interview. My interpreter explained the responses to me and noted the contradictions (if any). I generally asked for more clarification or raised a new question depending on what was being said. I did not ask personal questions about their role in genocide which reduced their incentive to lie.[180]

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with large scale killings of Hutu. Therefore, on a question that simply asked if the RPF had committed genocide, many of them would respond in the affirmative. It was by asking another question that got at the meaning of the word "genocide" that showed me that respondents were able to distinguish between large scale killings with intent to eliminate an entire group versus large scale killings that did not attempt to eliminate a group. Also, the narratives that accompanied these responses went a long way in ensuring that I understood my respondents accurately.
Allowing my respondents to speak in a relaxed way without hurrying them along, asking follow up questions and searching for clarifications is the main reason why progress was slow. The interviews were long each taking approximately 4 hours.

[179] As a second- stage check, I also had the questionnaire verified for accuracy of translation by a Rwandan field researcher working for an international human rights organization based in Kigali.

[180] I found that respondents were generally willing to talk. They seemed inclined to believe that foreigners would be sympathetic to the plight of prisoners. I explained I was a student, that I was there to learn and had no connections to any political group. I did not carry a tape recorder into the interviews so that the respondents would not be uneasy. Before beginning the interview, we would spend some time on small talk. I would ask if they had any questions for me and they usually did. They asked me where I came from, why I was studying in America, why I was interviewing them. I would explain that their names came up by using a random method and that the interviews were anonymous. I often had to demonstrate what the random method meant by putting small slips of paper into a bowl and picking a few out blindly. I discovered after a few minutes they would relax and indicate we had their approval to begin with the interview. I did not begin the interview unless the respondent said he was willing to help us by answering our questions and indicated we could start. If they were hesitant to answer a question,

3.6 Note on data sources

I use a variety of data drawn from different sources in this dissertation. Table 3.1 below shows what kinds of data I use for each of the empirical chapters that follow.

Table 3.1: Data sources for each chapter

Chapter	Contents	Data used
4	Prisoners	-Survey data
5	Information exposure	-Trial transcripts -Observation of trial proceedings -Interviews with local actors
6	Judges' autonomy	-Interviews with judges -Ethnographic data -Secondary resources -Government documents

For each question I raised, I have used a method (survey, ethnography, trial observation) that I judged was best suited to probe for answers. I also mined other sources of data: RPF elite interviews, government reports, NGO reports and newspaper articles. Most of these reports were in English (official translations from Kinyarwanda) and some in French. News paper articles from the Rwandan press are drawn from the only English daily newspaper.

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the usually response was "don't know". I generally moved onto other things and then tried to return to that question later to see if I could get an answer. Sometimes that strategy worked.

CHAPTER FOUR

SURRENDERING CONSENT: EVIDENCE FROM TWO PRISONS

4.1 Introduction

The core argument of this dissertation is that confessions produce political quiescence. Individuals 'surrender consent' after they confess, that is to say, they are not willing to enforce limits on state elites by holding them accountable despite questioning their moral authority to rule. Those who have not confessed also doubt that ruling elites possess moral authority, but in contrast to the confessed, they talk about the need for fresh political negotiations at the highest levels and regime change.

This chapter is based on the premise that we cannot understand the effects of confession unless we know what induces people to confess in the first place. Using procedures for randomization, I generate a small sample of accused individuals from two prisons.[181] The sample is divided into those who have confessed and those who have not confessed. I do not assume that individuals believe ruling elites lack the moral authority to rule. It is one among other hypotheses that I use to check if there are systematic differences that might explain why some confess and others refrain from confessing. The arguments are based on the distribution of responses that are presented in tabular form. I draw on respondents' narratives to substantiate the findings.

I use T-tests of significance for small samples. I use difference of means tests that take all the responses into account except for those who responded "don't know" to particular questions. For responses to most questions, I use a five point Likert scale

[181] Please refer to chapter 3 of this dissertation

with responses ranging from “strongly agree” (coded 5) to “strongly disagree” (coded 1). I also add a “don’t know” response option for each question in the survey. For survey questions on which I do not use the five point Likert scale, I indicate how I coded the responses in the text of this chapter where I present the relevant data. In the tables, I use an asterisk to denote significant difference[182] wherever applicable. I use a 10% threshold as a measure of significance. This means that the results presented as significant can be replicated 90% of the time.

4.2 Main findings from prison interviews

I present below my main findings from these interviews. First, for both confessed and non-confessed, the RPF government is seen as powerful and discriminatory; a predatory power to be feared. In their view, the long history of the country can be summed up as a violent struggle for power between Hutu and Tutsi elites with power alternating between them for finite durations of time. The military victory of the RPF is perceived by them to mean the return of rule by Tutsi elites. The RPF government is likened to Tutsi-dominated regimes of the past in which Hutu were unequal and oppressed. From these beliefs about the nature of Tutsi rule in general, there is a pervasive fear that the government wants to induce confessions so that it may target those individuals for indiscriminate punishment.

Second, for both confessed and non-confessed there is a belief that RPF elites have committed serious crimes against Hutu during the civil war and after, for which they have not been held to account. A direct result of this is that they believe that RPF elites do not have the moral authority to rule because they are guilty of rights violations.

[182] A p value of 0.09 or less represents a significant difference in the means of the groups being compared.

Indirectly this feeds into pre-existing negative stereotypes[183] they hold about Tutsi elites, specifically that Tutsi elites are manipulative and ruthless in their pursuit of power. This brings me to my third finding. I do not find evidence of eliminationist sentiments, genocide denial or lack of remorse although there do exist for both confessed and non-confessed mental maps about negative stereotypes of Tutsi. There was one individual in my entire sample who displayed an intense anger and bitterness toward Tutsi as a group.[184] But on the whole, my respondents were careful to distinguish between ordinary Tutsi and Tutsi elites. The former, they argued, had suffered enormously as a consequence of genocide and needed support to help them rebuild their lives. Some respondents ventured that as many as "eighty percent" of their Tutsi victims had been innocent instead of being collaborators of the RPF as they had been told during the civil war. They frequently repeated that there had been "no problem" between ordinary Hutu and Tutsi before the war and genocide.[185] There is

[183] The Bahutu Manifesto penned by a nascent Hutu elite in 1959 is a good example of the perceptions about Tutsi rule in general. The Manifesto spoke about "immutable historical differences" between Hutu and Tutsi, painting in broad brush strokes the characteristics of Tutsi as an ethnic group and making the case for overthrow of the Tutsi-dominated monarchy. For the full text, see F. Nkundabagenzi (1961), pp20-29. A more contemporary document that discusses inter-ethnic relations (among other things) is a report on an in-house symposium organized by the Catholic Church after the genocide. There was a session on the long standing stereotypes about essentialized collective ethnic characteristics of the 'other' held by Hutu and Tutsi alike. See Sinode igeze he mu madiyosezi yose [How Far Is the Synod in All Dioceses?] (1999, April 12-15), pp21-24

[184] "If I steal a dog from a Tutsi, I will not return it. I will hide the dog, or kill it… and throw it down a toilet- but I will not return it and I will never confess to taking the dog"; "The relation between Hutu and Tutsi is eternal, like the relation between a cat and a mouse. Wherever a cat finds a mouse- in a corner, on the wall, in the ceiling- it will kill it. Do you imagine we don't all know that? We all know it is so". After a while, he retreats from these statements by saying, "But it is not necessary that this has to be so…After all, Hutu are the ones who accused me. There were no Tutsi to tell what I did"

[185] In his analysis of the causes of the Rwandan genocide, Scott Straus shows that there was "strong evidence of interethnic cooperation before the genocide"….He continues, "Yet something changed…perpetrators substituted the Tutsi category for the individuals they were attacking….This idea of "Tutsi=enemy" is impossible without some preexisting, society-wide, and resonant notion of ethnic categories. The categories matter" See Scott Straus (2006), p9. That ethnic attitudes matter is supported by the findings of other researchers. Omar Mc Doom argues that mass mobilization "required a mindset – the internalization of a set of historical and ideological beliefs – within the Hutu population. These were predominantly beliefs in a historical Hutu oppression at the hands of Tutsi and in an ideological definition of the ongoing civil war as an ethnic one, a Tutsi attempt to reinstate this historical order." See Omar Mc Doom (2005). My data show that the ethnic generalizations continue but are projected onto Tutsi elites for the most part.

however a tendency to present survivors as beneficiaries of the RPF government.[186] Competing claims are made for compensation to Hutu victims.

My fourth finding is that those individuals confess who have more information exposed against them. This suggests that the decision to confess is made after taking an exogenous factor (information exposure) into account. In support of this interpretation, I find that the majority of the confessed have held out for numerous years before they stepped forward with a confession. It indicates a tendency to wait it out and assess the situation before proceeding with a confession. This explanation makes sense also in light of the responses to earlier questions. The accused fear that their confessions might be used to single them out for retribution by the government. I heard repeatedly that gacaca was a "trick" or a "Tutsi trick" to pressure people to confess in anticipation of reductions that would not materialize. "It (the government) entices us to confess because of its future plans…It (confessing) would be a serious mistake". [187]

They were not likely to confess unless pressured by an exogenous factor, in this case, exposure caused by accumulated information against them. It was common to hear from those who had confessed that "many people had testified against me already"[188] or "I was openly accused".[189] One confessed prisoner said that although he

[186] Ordinary Tutsi may not be immune from the dangers of collective ethnic categorization especially in times of insecurity and fear. Ordinary Tutsi were perceived as the natural beneficiaries in historical periods when Tutsi elites have been dominant. In the Hutu Revolution of 1959 that overthrew Tutsi elite rule, ordinary Tutsi were not spared from persecution. During genocide, ordinary Tutsi were believed to be accomplices of the RPF rebels who were led by the progeny of exiled Tutsi elites. In his analysis of original data, McDoom argues that "Overwhelmingly Hutu respondents believed that Tutsi were treated more favourably under monarchic rule by the mwami [king] (75%), and also under colonial rule by the Belgians (68%) Similarly the quasi-feudal relationship of ubuhake prevalent during the reign of the Tutsi monarchy was remembered as an oppression forced upon the Hutu (85%). Tutsi were generally remembered as being at the top of the social hierarchy, usually the shebuja (patron or master), while the Hutu was the mugaragu (vassal or servant) (85%). It is widely believed that Hutu received unjustified and cruel punishment from the Tutsi in the form of the ingoyi, the whip." Omar Mc Doom (2005), p18.
[187] Non-confessed prisoner, male, 52 years old, prison K. 9 September 2004
[188] Confessed prisoner, male, 49 years old, prison K. 14 September 2004

had been accused of killing five people, he had confessed to stealing only some iron sheets but "as more witnesses give evidence in gacaca, (I) could become even category one".[190] When I asked a prisoner who had not confessed why more people had not confessed, he replied, "You confess when there are testimonies against you".[191] Another said he would confess when there were "at least three witnesses" against him.[192] Yet another respondent said, "Non confession is not a solution for those who are guilty because the truth can be known from testimony in gacaca even if they (prisoners) reach a deal among themselves to remain silent."[193] Witness testimony in gaccaca and betrayal confessions among the accused are the two main mechanisms by which information on the accused is generated.[194] It is hard to judge *a priori* which pieces of information that emerge by means of betrayal confessions and witness testimony in gacaca are true and which are false but the main point here is that the more information is generated against an accused individual, the more likely he will be to confess.

My fifth finding shows that both the confessed and the non-confessed were aware of the sentence reductions and able to reason through its basic provisions on penalties. They knew that if they were to be found guilty without having confessed, the penalties would be severe. It is a rational move for those who sense they have been sufficiently exposed to confess in order to hope for advantages of lower sentences.

Despite the rationality of a confession at this point, the confessed are still fearful of being targeted with retribution. "This government is like a leopard waiting to pounce

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[189] Confessed prisoner, male, 38 years old, prison PCK, 20 August 2004
[190] Confessed prisoner, male, 42 years old, prison K. 7 September 2004
[191] Non-confessed prisoner, male, 38 years old, prison K, 6 September 2004
[192] Non-confessed prisoner, male, 42 years old, prison K, 2 September 2004
[193] Non-confessed prisoner, male, 30 years old, prison PCK. 30 August 2004
[194] The following chapters show how this information that is generated may not always be true.

on its prey", said a confessed prisoner explaining how vulnerable he felt.[195] A report by the organization *Penal Reform International* describes the fear experienced by the confessed who had been taken to a solidarity camp[196] (*ingando*) after which they were supposed to be provisionally released. The report quotes one of the confessed whose views, according to the report's authors, were typical of others who had confessed and were transiting through the solidarity camps in anticipation of release. "The ingando was to have lasted two months, but due to the commemorations of the genocide, which were to be held in April 2003, another month was added, which disappointed many participants. It was during this additional month of April that some of the prisoners were sent back to prison, explaining that a mistake had been made about their cases. This caused general panic! When the Prosecution's car was seen, some people would hide. It was in this state of tension that the participants lived until the closure of the ingando in May 2003. At their release, some received their identity cards but others did not. The latter were taken back to prison after spending another night in the camp."[197]

[195] Confessed prisoner, male, 42 years old, prison K. 7 September 2004

[196] Ingando are camps where specific groups of people (confessed prisoners transiting through the camps before being provisionally released, pre-college students, and demobilized soldiers of the previous government returning from exile) are lectured on RPF doctrine on patriotism, history, the ethnic question, defects of genocidal regime and national unity. Regarding Ingando for ex-combatants, one scholar argues that "the proclaimed government "loyalty" of ex-combatants recently returned from the Democratic Republic of Congo…may be a tradeoff for peaceful repatriation." Chi MgBako (2005), p203

See also a list of topics taught at the solidarity camps. National Unity and Reconciliation Commission: (2000, January 20). The topics include: Philosophy (origin of life, man and consciousness; law of dialectics; process of cognition); political economy; political science (liberation movements; RPF struggle, patriotism and nationalism, Pan-Africanism); history (case study of Rwanda; human rights and justice in Rwanda; gacaca courts); leadership optics (democracy and good governance, law, structure and functions of government; corruption); mobilization and topical issues (mass mobilization and cadre ship; role of people in national security; who is our enemy and who is our ally?; peace unity and reconciliation in Rwanda; role of youth in development; revolutionary discipline and methods of work).

[197] Penal Reform International (2004, May), p21

How do the confessed respond to this wrenching fear? This brings me to my sixth and final finding: the confessed demonstrate their loyalty by shifting responsibility onto other actors for crimes committed during the periods that Tutsi elites were in power or fighting for power. I find significant and systematic differences between the confessed and non-confessed in allocating responsibility for crimes perpetrated in the recent past as well as the historic problems handed down from the more distant past. The confessed exonerate Tutsi elites while the non-confessed choose to exonerate Hutu elites blaming instead the RPF for genocide and blaming the Tutsi regimes of the past for other historic problems. The non-confessed go even further emphasizing the role of ordinary Hutu in the genocide (that is, people like themselves) at the expense of holding Hutu elites accountable. The non-confessed use the legitimacy conferred upon Hutu elites to demand political negotiations at elite level.

While the responses of the non-confessed on allocation of responsibility are not surprising in light of the findings above, the responses of those who have confessed are puzzling. They have, like the non-confessed, already stated that RPF elites are discriminatory and oppressive much like the periods of Tutsi rule that predated colonialism. They believed, along with the non-confessed, that Tutsi elites were manipulative and could not be trusted. Like the non-confessed, they too believed that the RPF was guilty of war crimes that it had not accounted for; therefore they did not have the moral authority to rule. Yet they praised RPF elites for being “wise” and for its “good rule”. The confessed refused to hold RPF elites responsible for the troubles of the recent past. Sixty three percent of the confessed had said self defense against the RPF invasion was an important cause of genocide, but only 28% said it was the primary cause. They also declined to hold Tutsi elites in prior periods responsible for the troubled historical legacy. Ninety three percent of the confessed believed that a

power struggle between Hutu and Tutsi elites was responsible for the historical legacy of violence, but on a specific question on the origins of that power struggle, 64% deflected responsibility onto colonial powers or Hutu elites.

The most plausible interpretation is to see this as an outcome of the act of confession. While my sample is too small to conclusively determine cause and effect, this interpretation makes sense in light of what we already know about the fears surrounding confession and the finding that the accused are likely to confess under the pressure of exposure. The 'consent-effect' is a rational strategy of vulnerable people who have confessed hesitantly to present themselves as compliant and loyal to reduce the risk of being targeted for excessive punishment.

Here is an example of a volte-face from one of the confessed: [198]

On the pre-colonial past:

"There were Hutu-Tutsi problems in the past…The problem was that greedy leaders (Tutsi elites) wanted to rule forever…"

Versus

On responsibility for the source of historic problems:

"Colonialists left Rwanda with divisions that they (colonialists) had created leaving us in perpetual conflict"

On the RPF and genocide:

"Yes, Interahamwe[199] committed genocide….but genocide happened because Tutsi soldiers had attacked the country. There is no other reason why they (Tutsi victims) were killed… Also, the RPF killed a young man I knew"

[198] Confessed prisoner, male, 39 years old, prison PCK, 16 August 2004
[199] The leading Hutu militia during genocide; it means "those who attack together"

Versus

On the present situation:

"There are no problems between Hutu and Tutsi now…The government teaches reconciliation…Whoever has merits and ability should rule"

Here is another example[200]:

On the pre-colonial past:

"There was discrimination against Hutu. Client ship relations exploited Hutu. It existed before colonialism"

Versus

On responsibility for the source of historic problems:

"Bad relations between Hutu and Tutsi has historical roots…Colonialism exploited Hutu and oriented Hutu anger toward all Tutsi"

On the RPF and genocide:

"They (RPF) did not target all Hutu but there were massacres…Today in Rwanda we have bad leadership…There should be a day of remembrance for Hutu who died…They (RPF) tell lies…It is bad leadership that is responsible for genocide, so the events of 1994 may occur again"

Versus

On the present:

"If this political program continues, the country will develop…the government's goal is not to punish but to reconcile…" He continues tongue-in-cheek, "Even the one who

[200] Confessed prisoner, male, 48 years old, prison PCK. 24 August 2004

committed genocide is welcomed back and his property is returned to him before he is arrested."

The report by *Penal Reform International* is full of quotes from the confessed that were on the verge of provisional release and participating in the solidarity camps. It is striking how similar the confessed are to the responses I have detailed above. A confessed individual said to a Rwandan researcher working for the organization, "They (RPF) spoke of the way the colonizers handled the issue of ethnicity. But we do not agree with that…One of us asked if it was true. But he was looked at disapprovingly….In my opinion, the separation (between ethnic groups) did exist. I cannot deny that they existed, and I would not say that it was the bazungu (white men/foreigners), the colonizers, who brought this. It is what is said today, it is what is taught to children nowadays, it is what is taught in the reconciliation camps, etc. I shall never agree that the situation was only created when white men arrived. The situation already existed…. Serfdom existed before the White Man arrived … But it was aggravated by the politics imposed by the White Man….Those who should be condemned are the colonizers and the old regime. But first and foremost the colonizers…"[201]

They don't believe that colonial power was primarily responsible but end with affirming the primary role of the colonizer, sidestepping the role of Tutsi elites. The confessed thus tend to dissemble and are eager to appease those in power.[202] This is

[201] Penal Reform International (2004, May), p22

[202] The authors of the report worry that "the courses (rewriting history to underpin that Tutsi elites are unaccountable) will have a direct impact on the beliefs, attitudes and behavior of the people who attend them" (p23, p38) I would argue that these courses meant only for the confessed are not embraced uncritically and do not substantively change their pre-existing views. But there is a tendency to voice whatever version is politically expedient. The narratives above show that this is voiced despite disbelief. Further, this tendency is displayed among the confessed in my sample, none of whom had been exposed to Ingando before. This shows that fear and self-interest after a confession are sufficient conditions to produce the 'consent-effect'.

evinced by a refusal to hold the RPF specifically and Tutsi elites more generally accountable. In addition, there is a tendency to praise the regime and speak in celebratory terms even though they do not believe ruling elites have the moral authority to rule.

4.3 Testing explanations

I generate hypotheses from a number of distinct literatures and I test those to examine why the accused decide to confess or to refrain from confessing.

A considerable literature has emerged since the 1990s on accountability for human rights violations committed in times of war and peace. There are a few core arguments at the heart of this body of work. There is an emphasis on "truth" to distinguish a new regime as morally authoritative and set it apart from the old. "Truth" as a human right is intrinsically valuable[203] as also required to identify perpetrators and neutralize their influence on public life.[204] These arguments are bolstered by the literature on "blame attribution" in political psychology, key arguments of which have been tested by socio-legal scholars and more recently by political scientists.[205] Peoples' perceptions of the "truth", their assessments about the motives of relevant political actors and their judgments about allocation of responsibility matter because it affects peoples' evaluation of and response to those actors' claims to political power. Without a full accounting of the past, people are likely to resist the new order of things because it is perceived as less than legitimate.

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[203] "Right to truth" upheld by Inter-American Commission on Human Rights, drawing on key articles of the American Convention on Human Rights and first applied to key cases in the late 90s, related to Chile, El Salvador, Ecuador and Guatemala. It is used more and more as a yardstick against which to assess the transitional justice mechanisms being adopted. See for instance, a report on the impunity measures being considered by the Colombian legislature. Colombian Commission of Jurists,(2005, June 14)

[204] Naomi Roht-Arriaza and Javier Mariezcurrena eds. (2006), p3

[205] See for example, James L. Gibson and Amanda Gouws (1999, September)

The accusations against the RPF have been muted within Rwanda. The ruling elites' response for many years was to deny that atrocities and war crimes had occurred; it later acknowledged that these happened but argued these were inevitable given that they had been fighting the forces of genocide. The occurrence of these atrocities, their scale and intent remain shrouded in secrecy. External observers have commented that recent Rwandan history is not one of good guys or bad guys; they were all bad guys.[206] Some of this debate has played out in circles hostile to the RPF who claim that the latter are guilty and do not enjoy credibility. I wanted to see if those who had confessed thought that the RPF had not committed atrocities against Hutu civilians and were therefore morally authoritative. They are then more likely to respond to the law cooperatively.[207] In contrast, perhaps those who resisted confession believed ruling elites were guilty of abuses and therefore illegitimate.

Hypothesis one:

Individuals confessed because they thought that ruling elites had not committed war crimes or other rights violations against unarmed Hutu and are therefore legitimate.

Narratives of history can shape how discourses of grievance, victimization and entitlement emerge. These are stable and available for mobilization by political entrepreneurs.[208] In academic and non-academic writing on Rwanda, the most commonly used frame of analysis has been in terms of a 'Hutu-Tutsi conflict' embedded within narratives of mutual oppression over several distinct time periods in history.[209] This is pertinent because narratives about the distant past have been used by

[206] Stephen Smith (1996, February 22) ; James C. McKinley Jr. (1997, December 21); Jonathan Curiel (2005, May 15) ; Abdul Joshua Ruzibiza (2005); Robin Philpot (2006, June)
[207] Tom Tyler and Jen Huo (2002) Their central argument is that "willingness to comply critically depends upon a strong sense that legal authorities are legitimate".
[208] See for example, Jeffrey K. Olick (1998); A. James. McAdams (2001); Andrei S. Markovits and Simon Reich (1997); Marshall S. Clough (1998)
[209] For a recent academic work in this vein, see Mahmood Mamdani (2001)

ruling elites at different times in Rwanda to delegitimize political opponents and cement their claims to power.

For Hutu elites in the First and Second Republics, the "ethnic temptation" was irresistible. The fact that 85% of the population was Hutu presented them with a low cost, almost automatic route to power.[210] Ethnic politics guaranteed Hutu elites an electoral majority, so they invested politically in institutionalizing an ideology of racial difference, couched in a narrative about the historic oppressions suffered by Hutu under Tutsi elites that predated colonial rule. In contrast, RPF elites have presented the pre-colonial past as a time of unity and peaceful co-existence under the King's rule, a period of calm that was rudely disrupted by the colonial powers that played a politics of divide-and-rule, introduced the race-based census and extracted burdensome taxes from Hutu.

How did the accused assess earlier periods of rule? In particular, did they believe earlier periods of rule by Tutsi elites were just?

Hypothesis two:

Individuals confessed because they believed that the pre-colonial past was a period of benign rule by Tutsi elites, and were therefore more likely to trust the regime.

I test two broad sets of arguments about identity and its relationship to conflict.[211] A primordialist approach emphasizes that identities are fixed and biologically determined; in this view, the conflict cleavage is pre-determined and non-negotiable. A different approach is constructivist of which there are many variants but the core argument is that identities are more fluid than biologically fixed, shaped over time and not necessarily exclusive. The RPF project of national unity and reconciliation is

[210] On the "ethnic temptation" of 85% population being Hutu, see Jean Pierre Chretien (1997)
[211] For a nice overview, see Kanchan Chandra, (Winter 2001)

underpinned by claims about the class- based origins and fluidity of Hutu-Tutsi identities which allowed both groups to live together in peace until the advent of the colonial power.[212] These ideas about occupational difference as the basis for identity have existed for a long time. The RPF has sought to use these ideas to make a case for the historic unity between Hutu and Tutsi. There are also traditional myths about the common origins of Hutu and Tutsi as there is also a long standing narrative about biological difference as the basis of group identity. This narrative about racial difference was instrumentalized by the Hutu regimes to make a case for the inevitable conflict between Hutu and Tutsi.

Hypothesis three:

Individuals who confessed were more likely to perceive ethnic identities as non-antagonistic, and therefore more likely to believe that the RPF regime dominated by Tutsi was not hostile.

The literature on genocide explains what drove ordinary people to violence and although it is not the purpose of this research to explain why ordinary Hutu participated in killing, the project does attempt to understand the causes behind individual choices to participate or refrain from participating in the trials process. It may be that among the reasons that drove them to violence, there are a few that motivate the decision to refrain from confessing. RPF elites certainly place a great deal of weight on "genocide ideology" Similar cultural or attitudinal explanations, such as German eliminationist anti-Semitism, have been proposed to explain the Holocaust.[213] A watered-down version of this may be 'simply' ethnic hatred. Research findings in Rwanda and other contexts however have shown that perpetrators were not

[212] Report by Government of Rwanda (1999, August)
[213] For instance, see Daniel Goldhagen (1996)

culturally inclined towards eliminationism or animated by a virulent hatred of the ethnic 'other'.

Hypothesis four:

Those who have confessed are less likely to demonstrate strong anti-Tutsi attitudes, and are therefore more likely to be favorable toward the regime.

Sociological explanations for popular participation in the genocide in Rwanda center on the role of social networks that enabled perpetrators to mobilize their friends, neighbors and family members.[214] Is there evidence that the same social networks might be responsible for producing confessions? The law required that those who confessed must denounce their accomplices. Perhaps an individual was more likely to confess if many network members had also confessed generating denunciations against him in the process. Here, the number of network members who have confessed is used as a proxy for information exposure.

Hypothesis five:

Individuals were more likely to confess if they had higher numbers of friends and acquaintances from their community in prison who had confessed.

There are vast literatures on crime, deterrence and contracts which suggest that an actor is more likely to comply with an agreement if it believes that the other party both intends to and will be able to keep its side of the bargain.[215] This question of assessing the intentions of ruling elites (whether they can be trusted, whether they are likely to

[214] Lee Ann Fujii (2006); see also Charles Mironko (2005). p189. His research on Hutu death squads (ibitero) shows also that Hutu moved about in groups of people many of whom known to one another; Jean Hatzfeld (2005). Hatzfeld interviewed a group of prisoners who had confessed who had been friends before the genocide and remained on good terms after confessing.
[215] For a good overview, see Abram Chayes and Antonia Handler Chayes (1993, Spring); David F. Luckenbill (1982, March), p821

be hostile etc) underlies hypotheses 2-5 above. Nevertheless, I frame this as a separate hypothesis here to reinforce the findings from the above.

Hypothesis six:

Individuals confessed because they were more likely to assess that the government intended reconciliation and was powerful enough to keep its side of the guilty plea bargain.

4.4 Overview of the sample of respondents:

Table 4.1: Sample of respondents

TABLE 4.1		N=18	N=20
		C (in %)	NC (in %)
Occupation	peasants	50	45
	govt clerk	5.5	10
	manual jobs	33.3	25
	NGO	5.5	5
	education	5.5	10
	artistic	0	0
	commerce	0	5

Table 4.1 continued

		N=18	N=20
		C (in %)	NC (in %)
Religion*	Adventist	27.7	10
	Pentecostal	16.6	5
	Protestant(Other)	5.5	10
	Muslim	11.1	5
	Catholic	38.8	70
Education	Illiterate	50	25
	Primary	5.5	10
	Middle	22.2	25
	Secondary	16.6	25
	Sr. Secondary	0	15
	College	5.5	0
	Other	0	0
Political party (1994)	MRND (ruling party)	16.6	30
	MDR (opposition party)	5.5	15
	CDR (Hutu extremist party)	5.5	0
	None	72.2	55

The majority of non-confessed are Catholic (70%) while for the confessed, the number of those who belong to Protestant Churches (49.8%) is slightly higher those who belong to the Catholic Church (38.8%). The difference is statistically significant

[T test (p=.07)].[216] I do not systematically investigate the effect of religious beliefs on the decision to confess or not to confess but I discuss some possible implications in the following paragraphs.

All the Churches in Rwanda had been supportive of Habyarimana's MRND government and the Catholic Church more deeply so as the Archbishop was close to the President's inner circle and a member of the MRND central committee.[217] The Catholic Church had also supported the Hutu revolution of 1959[218] and stands accused by the RPF regime of being complicit in the genocide.[219] The tense relations between the Catholic Church leadership and the RPF regime are reported to be gradually improving.[220] Nevertheless, representatives of the Catholic Church were notably absent at an inter-faith meeting on reconciliation that was held between Rwandan religious leaders and a visiting delegation of the South African Council of Churches. The latter reported that their meeting with Rwandan faith communities was the "least satisfying" part of their visit. The report noted the divisions between the various Christian Churches and mentioned that a courtesy visit to a leader of the Catholic Church in Rwanda was brief and no mention was made of the genocide or of the Church's role in it.[221]

[216] Coding: Catholic=0; Protestant=1; Muslim=2
[217] Phillip Cantrell (2007), p336
[218] Phillip Cantrell (2007), p335
[219] Several prominent Catholic leaders, lower ranked priests and nuns of the Catholic Church have been accused. Some have been tried and found guilty in Belgium, at the International Criminal Tribunal at Arusha and in the gacaca courts. The Catholic Church however has maintained that individual priests, not the institution of the Church as a whole, can be held responsible. See for example, Stephanie Nieuwoudt (2006, December). In fact, the RPF government has recently accused the Vatican funded radio station of broadcasting only 2 news items on the commemoration of the Rwandan genocide (which lasts a week) despite the fact that the station broadcasts 24 hours. See Rwanda News Agency (2008, April 15).
[220] US Department of State(2005)
[221] South African Council of Churches (2005)

However, the Catholic Church has formally extended general support for the gacaca process. It was not the Catholic Church but the Protestant Pentecostal Church that was targeted for criticism by a Parliamentary Commission report for preaching genocide ideology and divisionism.[222]

Against this background, a few points are important to note: First, religion has not historically been a politically salient cleavage in Rwanda. Regionalism and ethnicity have been more politically consequential. Second, it may be hypothesized that Church affiliation influences political attitudes. In this project, however, I examine a wide array of political attitudes on which I find that the confessed and non-confessed do not differ in a statistically significant manner on core political values. Finally, 69% of the confessed and 84% of the non-confessed believed that their religion was an important factor that convinced them reconciliation and forgiveness was necessary. Despite variation in religious affiliation, it appears that for the majority of both the confessed and the non-confessed, their assessment of the demands of their religious beliefs seems to be largely the same.

None of the arguments above are conclusive. It is likely that the impact of religious beliefs on confession is not direct or straightforward and would require a deeper investigation. My findings from the study suggest that the accused feel guilty (regardless of whether they have confessed or not confessed) but they hesitate nevertheless to step forward with a confession because of the fear of indiscriminate punishment by ruling elites. The 'consent-effect' on which the confessed and the non-confessed differ significantly is produced not by differences in core political attitudes but by the need of those who have confessed to signal their loyalty to reduce the

[222] Amnesty International (2004, July 6)

likelihood that ruling elites may not follow through with the promised sentence reductions.

In terms of education, half the confessed in my sample are illiterate as compared to a quarter of the non-confessed, but overall the difference between the confessed and the non-confessed in terms of education is not statistically significant [T-test (p= .12)].[223] They are also similar in terms of occupation [T-test (p=.77)].[224]

I asked a series of four questions in order of increasing difficulty to check if there were differences in their knowledge of the law or understanding of its provisions.[225] For each response, the difference between the confessed and non-confessed is not statistically significant (table 4.2).[226] I find that a majority of prisoners were able to broadly and accurately compare reductions and think through the basic logic of the law.

[223] Coding: Illiterate= 0; Literate=1. If we do not reduce the various levels of education to the literacy/illiteracy dichotomous variable, then the p value is still statistically insignificant at p= .15
[224] Coding: Manual labor= 1; peasants=2; other (jobs that require formal education)= 3
[225] Questions #1 and #2 were straightforward, presenting respondents with the number of years an accused could expect in sentence reductions if he confessed. I asked them to verify if the reductions just read out to them were accurate as per the law. Predominant majorities for both confessed and non-confessed prisoners responded correctly. Questions #3 and #4 were more complicated. For instance, question #3 asked them to verify sentence reductions for those who had killed without intending to cause death and #4 asked respondents to compare sentence reductions across categories. The responses for #3 show that for both confessed and non-confessed prisoners, less than one third of respondents answer correctly when probed about minute details on reductions for mitigating circumstances.
[226] Coding: Correct response= 1; Incorrect response=2

Table 4.2: Responses on knowledge of the law

TABLE 4.2: Knowledge of incentives	Law Qs #1		Law Qs #2		Law Qs # 3		Law Qs # 4	
	N=16	N=20	N=16	N=20	N=16	N=20	N=16	N=20
	C (%)	NC (%)	C (%)	NC (%)	C (%)	NC (%)	C (%)	NC (%)
Correct answer	87.5	80	81.25	90	25	15	68.75	65
Incorrect answer	6.25	0	12.5	0	43.75	55	12.5	5
Said "Don't know"	6.25	20	6.25	10	31.25	30	18.75	30
T-test	**p= .33**		**p= .16**		**p = .44**		**p= .52**	

The reasons for this are the following: Prisoners are lectured on the law and its incentives for confession rather than handed the legal document to study on their own. In these overcrowded prisons where the inmates are not housed separately by the category of crime they are accused of, prisoners with various educational backgrounds mingle and discuss the law among themselves exchanging information and learning from one another. This point was confirmed by an independent researcher working with prisoners in Rwanda. As most prisoners have spent a number of years in prison, there are opportunities to develop a better understanding of the law over time by means of cumulative discussions among themselves and repeated "sensitization" sessions organized by Ministry of Justice officials and prison authorities. It is likely that formal schooling or lack of it does not have a significant impact on their understanding of the logic and substance of the rewards and penalties regarding confession.

New research on education supports these arguments. The assumption that a basic level of schooling is required for all further learning is being questioned. It finds that "adults learn through doing, not in preparation for doing".[227] Difficult words, concepts and techniques can be learnt by adults without necessarily beginning with simple and standardized learning as long as those difficult words and concepts are meaningful in the context of some immediately relevant activity or occupation. Words and concepts are not difficult in themselves and adult learners can cope with them so long as they fall within the realm of their usable experience. In India, for example, a group of women without formal education worked their way through a hand pump manual without needing to refer to a literacy primer.[228] In a project in the Dominican Republic, children who did not have access to formal schooling learnt roughly the same content in 1 hour of radio instruction that their counterparts in formal schools learnt in 3-4 hours of instruction by following up on the radio lesson with stories and open-ended discussions.[229] New understandings of the difference between formal schooling and literacy (understanding, reasoning and application specific to an occupation or life situation) are being applied in a variety of projects around the developing world by governments in partnership with UNESCO.

Turning to political affiliation, I find that the bulk of the confessed (72%) claimed not to have been affiliated with any political party at the time of genocide as compared to 55% of the non-confessed. This is not a statistically significant difference [T-test (p=.37)]. [230]

[227] Alan Rogers (2005)
[228] Alan Rogers (2005)
[229] Literacy Projects, RADECO, Dominican Republic.
[230] Coding: No party= 0; MRND=1; other parties=2

Existing research shows that there were regional specificities in the way genocide unfolded not only across provinces but also within the same district of a given province.[231] The sample offsets to a small extent the danger of a regional bias even though the two prisons are situated in Kigali. The respondents originate in different provinces, and even when they are from the same province, they come from different districts and sectors.

Table 4.3: Distribution of respondents by province

TABLE 4.3	N=18	N=20	N= 38
Provinces	C (in %)	NC (in %)	Total (in %)
Kigali	55.5	60	57.8
Kigali Rurale	22.2	25	23.6
Umutara	5.5	0	2.6
Kibungo	11.1	10	10.5
Ruhengeri	5.5	5	5.2

[231] See Timothy Longman (1995). He explains how genocide unfolded differently in neighboring districts in Kibuye prefecture.

Table 4.4: District-wise distribution of respondents from Kigali

TABLE 4.4	N=10	N=12	N=22
Districts of respondents from Kigali	C (in %)	NC (in %)	Total (in %)
Nyarugenge	50	50	50
Nyamirambo	30	0	13.6
Gikondo	10	8.3	9.1
Kanombe	10	0	4.5
Kicukiro	0	16.6	9.1
Kacyiru	0	8.3	4.5
Gisozi	0	8.3	4.5
Butamwa	0	8.3	4.5

Table 4.5: Sector-wise distribution of respondents from one district in Kigali

TABLE 4.5	N=5	N=6	N=11
Sector-wise distribution of respondents from Nyarugenge district, Kigali	C (in %)	NC (in %)	Total (in %)
Cyahafi	40	0	18.2
Nyamirambo	40	16.7	27.2
Kimisagara	20	16.7	18.2
Biryogo	0	33.3	18.2
Gasyata	0	16.7	9.1
Nybanda	0	16.6	9.1

4.5 The findings

4.5.1 Guilt and moral authority

I find that the majority of both confessed and non-confessed agreed that the RPF had committed war crimes against Hutu even though they admitted that RPF soldiers had not intended to kill all Hutu or even kill all those in the Hutu militia (interahamwe) that was most active in perpetrating genocide (Table 4.6). One confessed prisoner put it this way, "RPF does not accept its role…yet it wants to punish us and then tell us we are reconciled…We are not fooled…"[232] They agreed that war crimes against Hutu

Table 4.6: Perceptions on the occurrence of and responsibility for war crimes and genocide

TABLE 4.6: In your understanding, what really happened in 1994?	Interahamwe targeted all Tutsi for death		Interahamwe targeted moderate Hutu for death		RPF targeted all Interahamwe for death		RPF targeted all Hutu for death	
	N=16	N=20	N=16	N=20	N=16	N=20	N=16	N=20
	C %	NC %	C %	NC %	C %	NC %	C %	NC %
Yes	75	60	100	85	18.75	25	18.75	5
Perhaps	0	0	0	0	0	0	0	0
No	12.5	25	0	15	75	55	81.25	80
Don't know	12.5	15	0	0	6.25	20	0	15
T-test	**p= .13**		**p= .15**		**p= .52**		**p = .20**	

[232] Interview with confessed prisoner, male, 63 years old, prison PCK, 23 August 2004.

had occurred without denying that genocide against Tutsi had also occurred. "If I was a judge, I would punish both sides but this government denies the deaths of Hutu…An official from the Parquet came and some prisoners asked him what would happen to the bones of Hutu who died. He (the official) said, "When you come to power, then you can look for those bones but now we will only look for the bones of Tutsi to bury them""[233]; "RPF soldiers killed Hutu in revenge…but they did not target all Hutu. That is why it was not genocide...At least 100,000 Hutu died in revenge killings, so Hutu also need help"[234]; "Inkotanyi (RPF) killed those who had committed genocide or those who were falsely accused of committing genocide…It was a quick way of punishing perpetrators."[235]

It is noteworthy that the majority of the confessed and non-confessed were able to agree on the historical occurrence of both genocide and war crimes.[236] The "war of the bullets" and the "war of the machetes" are linked in their experience of how the events had unfolded[237] even as they are able to distinguish between the intent and consequences of both "wars". The majority of confessed as well as non-confessed also felt that genocide had been a response to the invasion by the RPF (table 4.7).

The differences between the confessed and non-confessed are not significant as shown by the p values in the tables. Both believe that ruling elites do not possess moral authority because of abuses perpetrated against Hutu that have not been accounted for.

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[233] Interview with confessed prisoner, male, 50 years old, prison K, 1 September 2004
[234] Confessed prisoner, male, 38 years old, prison PCK, 24 August 2004
[235] Non-confessed prisoner, female, 49 years old, prison PCK. 20 August 2004
[236] Particularly when Tutsi elites deny war crimes, and n some quarters, Hutu elites still deny that genocide against Tutsi happened.
[237] Scholars are beginning to make a case for understanding genocide as the product of the strategic interaction of actors engaged in war. See Alan J. Kuperman (2004)

Table 4.7 Perceptions of genocide as an act of self-defense against RPF aggression

TABLE 4.7	Killing of Tutsi as self-defense against RPF attack	
	C%	NC%
Very important	63%	55%
Important	0%	0
Not at all	37%	25%
Don't know	0%	20%
T-test	**p = .53**	

4.5.2 Ideology

There was also no evidence to suggest that those who had not confessed were animated by some sort of anti-Tutsi hatred or eliminationist intent, or that prisoners who had confessed were more positively inclined towards reconciliation.

Fifty six percent of the confessed and fifty three percent of the non-confessed believed that land should be shared by Hutu families with Tutsi who had returned from exile. Among the minority who believed there was no a priori obligation to share the land, most argued that some land had belonged originally to these Tutsi families who had fled the country in 1959, therefore the latter needed to decide whether they wanted to share with Hutu or not.

A majority of both confessed (63%) and non-confessed prisoners (53%) also sympathized with the situation of genocide survivors, agreeing that the latter needed special support for rehabilitation and recovery. They argued that the manner in which

Tutsi had been systematically targeted had left survivors with nothing and so entitled them to special support. Those who disagreed argued that although genocide survivors need special support, Hutu victims of atrocities committed by the RPF should get equal consideration because their situation was sometimes as desperate as Tutsi genocide survivors. The rest maintained that government support should be need-based without regard for the identity of the victim. Thus, those who disagreed that survivors required special support did so not in order to deny survivors what they needed but to emphasize that Hutu victims needed aid as well.

Both confessed (94%) and non-confessed prisoners (74%) said it was important to remember genocide. They added that it was important to remember moderate Hutu who died in the genocide as well as Hutu killed by the RPF. Those who disagreed about the need to commemorate genocide argued that they felt insecure and threatened by the manner in which commemoration stirred feelings of anger and grief among Tutsi.

I was surprised to find that half of the sample, from both confessed and non-confessed agreed that the guilty should be punished, although the bulk of those who agreed to punishment wanted greater sentence reductions.[238] (Table 4.8)

[238] Coding: Punish=1; Amnesty= 0. The acceptance of punishment could have something to do with Rwandan tradition in which the usual response to murder has been retaliation in kind. Only the King could waive such a punishment. See Francoise Digneffe and Jacques Fierens et al. (2003). Sometimes, survivors cite tradition when they express indignation at the reduction of sentences for perpetrators of genocide. Ironically, perpetrators too cite tradition to argue that the reduction of sentences must be an RPF trick, how else would anyone forgive individuals who murdered so many innocents? See Penal Reform International (2007, March), p28

Table 4.8: Perceptions about amnesty and punishment

TABLE 4.8	N=18	N=20
In your view, should perpetrators be punished or forgiven?	C %	NC %
Punishment as hard lesson	11.11	10
Further lower punishment	38.89	40
Amnesty	50	50
T-test	**p = 1**	

Although all the respondents (100%) expressed a desire for reconciliation, they were more pessimistic about the possibility of achieving that outcome. The arguments pointed to the impossibility of forgiveness for the kind of crimes that had been committed against Tutsi: "They hate us for what we did"[239], "I cannot bear to face the relatives of those I killed"[240] or blamed the government for standing in the way of inter-personal reconciliation: "Why can't the government release prisoners so they can meet the victims of their actions and ask for pardon?"[241] 72% of the confessed and 79% among the non-confessed believed that reconciliation was possible. They spoke of the need for greater personal security, a better livelihood and appeared anxious to move on with their lives.

Respondents, both confessed and non-confessed, expressed negative sentiments towards Tutsi who were perceived as powerful. The main target of their anger was IBUKA, the umbrella genocide survivors' organization. A confessed prisoner asked rhetorically, "Who rules Kagame? It is IBUKA".[242] Other confessed prisoners

[239] Non-confessed prisoner, male, 26 years old, prison K. 3 September 2004
[240] Confessed prisoner, male, 49 years old, prison PCK 20 August 2004
[241] Non-confessed prisoner, male, 42 years old, prison K 2 September 2004
[242] Confessed prisoner, male, 50 years old, prison K, 1 September 2004

expressed distrust: “It is all tricks. IBUKA stopped the release of confessed prisoners. Its leaders should be put in prison”[243]; “There is not much effort by the government to release those who have confessed. Perhaps this is due to IBUKA. The government listens to IBUKA”.[244] These sentiments often veer into negative stereotypes of Tutsi in general in which Tutsi are portrayed as adept in the art of subtle manipulation: “The discrimination against Hutu is there but it is not done openly. There are many tricks”[245]; “I am in prison because I am Hutu…They (government) want to use…hundred Tutsi tricks to eliminate innocent people.”[246]

In sum, there is little basis on which to conclude that those who have not confessed do so because of a generalized hatred of Tutsi or that those who have confessed do so because they are more positively inclined towards reconciliation. There are negative stereotypes of Tutsi shared by both the confessed and the non-confessed but these are projected for the most part onto powerful Tutsi with influence over political life and the fate of the accused rather than individual genocide survivors. In fact, the confessed are not dissimilar from the non-confessed in their attitudes towards survivors. There is guilt and sympathy as also resentment at their perceived entitlements.

4.5.3 Identity, history and power struggles

I asked a set of four questions to probe respondents’ perceptions of the basis of the group identities. Each question was framed as a short narrative. The first three questions asked if Hutu-Tutsi identities were originally based on occupational differentiation (Tutsi as cattle keepers and Hutu as peasants), if there had been social mobility between the groups and if they believed that both groups descended from the

[243] Confessed prisoner, male, 63 years old, prison PCK. 23 August 2004
[244] Confessed prisoner, male, 34 years old, prison PCK, 26 August 2004
[245] Confessed prisoner, male, 34 years old, prison PCK, 26 August 2004
[246] Non-confessed prisoner, male, 49 years old, prison PCK, 10 September 2004

same mythical ancestor. I asked if they believed that the colonial regime was to be blamed for introducing the idea of racial difference. The fourth question asked if Hutu and Tutsi were separate races even before the advent of colonialism.

Did the confessed view Hutu-Tutsi identities as malleable and non-conflictual while the non-confessed believed their identities were premised on immutable differences between races?

In general, the bulk of both confessed and non-confessed prisoners agreed that these identities were originally based on occupational specialization. Second, they agreed that some degree of social mobility had been present. If a Hutu gained a certain number of cows, he could rise in social status and become Tutsi-fied but in their view this had not been a very frequent occurrence. Finally, they believed that the economic power of Tutsi had translated into political dominance even before the colonialists arrived which had allowed them to exploit Hutu with unpaid labor and discrimination.[247] The differences between the confessed and the non-confessed on identity are not significant (p values in table 4.9). The data and the narratives accompanying prisoners' responses suggest that for ordinary Hutu, both confessed and non-confessed, group identities did not necessarily have to be understood as race-based to be perceived as conflictual and enduring.

[247] The main contours of the story that emerged from the narratives are the following: Hutu and Tutsi share the same mythical father Kanyarwanda, therefore they are brothers and are related by blood. However, the brothers became estranged. One brother reared cattle while the other brother tilled the earth. Gradually, Tutsi established economic superiority over Hutu because his herd of cows grew in size. The growth in wealth led to the emergence of the dominance of Tutsi over Hutu. This economic dominance then translated into political dominance. There was limited mobility of individuals between the two statuses. There was a relationship of mutual benefit between Hutu and Tutsi before the colonialists arrived. Hutu received gifts of livestock from Tutsi and they gave their labor in return. Tutsi, who were tricky and wanted dominance, began to exploit the Hutu with unpaid labor, beatings and discrimination. The colonialists however introduced the theory of separate origins without a blood connection.

Table 4.9 Responses on beliefs about identity

TABLE 4.9	Hutu and Tutsi indicated occupational difference		There was mobility between groups		Hutu and Tutsi originated from same ancestor		Hutu and Tutsi have always been separate races- even before colonialism	
	N=16	N=19	N=16	N=19	N=15	N=19	N=16	N=19
	C%	NC%	C%	NC%	C%	NC%	C%	NC%
Yes	68.75	63.15	50	42.2	73.33	47.36	18.75	10.52
No	6.25	5.28	25	15.6	26.67	15.78	43.75	31.57
Don't know	25	31.57	25	42.2	0	36.86	37.5	57.91
T-test	**p = .95**		**p= .76**		**p = .93**		**p = .83**	

Respondents demonstrated some uncertainty and even a great deal of reluctance to answer whether Hutu and Tutsi are different races. The non-response rates are high for both the confessed and the non-confessed. Even if we assume that they are holding back from expressing their 'real' opinions, there is enough of an indication from the other responses on the issue of identity to suggest that at a minimum, they are both agreed that the identities were conflictual and historically evolved as such before the colonial period.[248]

[248] The responses are congruent with pre-existing myths about the common origins but different statuses, essential natures and skill sets of the three ethnic groups designated for them by the mythical founder of the country: prestige and political leadership for Tutsi; a life of labor for Hutu; for Twa, the status of inferior protégé of the other groups.. Josias Semujanga (2003), pp. 22-23

This finding was corroborated by 56% of the confessed and 58% of the non-confessed who believed that pre-colonial rule was unfair (table 4.10). "I heard from my grand father that Tutsi colonized Hutu and made them their subjects. They forced them to work without pay… History tells us that under the King there were injustices against Hutu"[249]; "There was no forced labor until colonial powers arrived but Tutsi despised Hutu and treated them like slaves"[250]; "Tutsi rule was unjust on Hutu. It has been hatred and revenge since then".[251] Some respondents exonerated the King saying he had been sympathetic to Hutu but blamed Tutsi chiefs for the exploitation of Hutu: "The King favored Hutu…He (later) abolished unfair practices[252]…His administrators were bad. The King was not Tutsi in character."[253]

Table 4.10: Perceptions of early Tutsi rule

TABLE 4.10	N=16	N=20
Nature of pre-colonial rule: Was it unfair toward Hutu?	C%	NC%
Yes	56.25	57.89
Perhaps	0	10.54
No	12.5	5.26
Don't know	31.25	26.31
T-test	**p = .63**	

[249] Confessed prisoner, female, 42 years old, prison PCK, 19 August 2004
[250] Non-confessed, male, 49 years old, prison PCK, 27 August 2004
[251] Non-confessed, female, 49 years old, prison PCK, 20 August 2004
[252] Between 1952 and 1954 the Tutsi King Mutara Rudahigwa abolished the ubukonde system of land tenure and required all abakonde (ubukonde owners) to share their land with the clients exploiting it. At the same time, the king abolished the ubuhake system of cattle clientship, but other forms of land tenure and clientship remained more or less intact. Jennie E. Burnet and the Rwanda Initiative for Sustainable Development (n. d)
[253] Confessed prisoner, male, 30 years old, prison PCK. 16 August 2004

To probe further, I asked them what they thought could be the main reason for the Hutu-Tutsi conflict of the past. Ninety three percent of the confessed and eighty percent of the non-confessed talked about a "power struggle". Their argument was that the central issue was a power struggle between Hutu and Tutsi elites. They believed this struggle for power between competing elites had long historical roots ultimately becoming the natural logic of politics in the country. Each episode of alternation of power between ruling elites had been accompanied by violence directed from above, forcing ordinary people who had no problems[254] to turn against each other. "Political leaders always have a hidden agenda…The conflict (between Hutu and Tutsi) is political…Leaders manipulate people until those who loved each other betray their friends and kill them"[255]; "All people are children of God…they live in peace until the government comes and brings conflict"[256]; "Hutu leaders and Tutsi leaders are thirsty for political power and for property…each group wanted to rule…but these things come and go…We are brothers"[257]; "Hutu-Tutsi problems… were caused by greedy leaders who wanted to rule forever."[258]

I asked them if they believed that a conflict persisted at the present time. A majority of both confessed (56%) and non-confessed (60%) agreed. At the end of the interview, I asked them if they believed another round of violence was possible. They did not think it likely unless the current government was toppled or faced with the prospect of

[254] Most respondents, both confessed and non-confessed prisoners, believed that ordinary people have much in common, and that everyday relationships at the level of ordinary people were rarely the source of conflict. The most common response was that ordinary Hutu and ordinary Tutsi shared the same country, followed closely by the argument that they were neighbors, carried the sick to hospital together, shared drinks, and gave their daughters to one another in marriage.
[255] Confessed, male, 38 years old, prison PCK 24 August 2004
[256] Confessed, male, 50 years old, prison K, 1 September 2004
[257] Confessed, male, 30 years old, prison PCK 17 August 2004
[258] Non-confessed, male, 38 years old, prison K 6 September 2004

losing power. Most respondents believed that this was unlikely to happen because there were few challenges to its rule. It was not uncommon to hear statements like "Kagame gave an order to start killing if he was not elected in 2003"[259] or "In 1994, the RPF killed those who simply tried to resist whereas even if you killed a thousand people, RPF only put you in prison. If you tried to fight against it, you would get killed."[260]

In summary, this section tells us the following: First, to be Hutu meant to be dominated by Tutsi even before the colonialists arrived in Rwanda. The source of the conflict is traced to a distant period of rule by Tutsi elites. Second, Rwanda's political history is interpreted as a power struggle between elites that necessitated the oppression of the ethnic 'other'. This struggle is believed to persist at the present time. Third, respondents believed that the regime of Tutsi elites is here to stay. "The day I came here, a guard told me, 'Welcome to prison. We ruled you for four hundred years and now we are going to rule you for eight hundred"'[261] The differences between the confessed and the non-confessed are not significant. Beliefs about identity or perceptions about the politics of the distant past do not explain why some people confess and others do not. It is clear however these beliefs about the nature of Tutsi rule predispose the accused towards fear and apprehension about the intentions of the current ruling elites.

4.5.4 Government as contracting party: Assessing capability and intent

In the minds of most respondents, the government seemed to be both immensely powerful and predatory. They saw the regime as powerful, discriminatory and fully able to achieve its goals (table 4.11).

[259] Confessed prisoner, male, 50 years old; prison K. September 1, 2004.
[260] Confessed prisoner, male, 30 years old; prison PCK. 23 August 2004.
[261] Confessed prisoner, male, 42 years old, prison K. 7 September 2004.

Table 4.11: Perceptions of power and intent of government

TABLE 4.11	Does this government discriminate against Hutu?		Can this government defeat its enemies?	
	N=16	N=19	N=16	N=19
	C%	NC%	C%	NC%
Yes	50	52.63	93.75	78.95
Perhaps	0	0	0	0
No	43.75	26.32	0	0
Don't know	6.25	21.05	6.25	21.05
T-test	**p = .37**		**p= .7**	

They however did not believe that the RPF intended a genuine reconciliation. A repetitive theme in prisoners' narratives was the notion of 'gratitude', a feeling that the government had demonstrated remarkable restraint in not doing to them what they had done to their ethnic kin. Respondents said that this showed the government, though powerful and discriminatory, could be benevolent. The widespread understanding was that as long as they did not oppose or challenge the government, they would be safe from harm and there could be other benefits. One of the confessed prisoners explained, "My children are supported by a government education fund. My eldest son is now in secondary school. Yet the government knows what I did…This is a forgiving merciful government."[262] A majority of accused, both confessed and non-confessed, seemed grateful just to be alive.

'Gratitude' however did not translate into a trusting view of the government, particularly when most of the accused saw the government as discriminatory, unjust in

[262] Confessed prisoner, female, 42 years old; prison PCK 19 August 2004.

hiding its own record of crimes and capable of inflicting severe punishment. One of the confessed argued, "Reconciliation requires openness and sincerity…but they [RPF] are tricky…they do not accept their role. Yet they lie to us that we have reconciled so that they may eliminate us when we stupidly think we are safe…"[263] In light of their narratives, I am surprised to find that there is a significant difference between the confessed and non-confessed when I ask them if the government wants reconciliation by means of reduced punishment (table 4.12).

Table 4.12: Perceptions on government's reconciliation initiatives

TABLE 4.12	Does the government want reconciliation by inviting Hutu refugees to return?		Does the government desire reconciliation via reduced punishments?	
	N=16	N=19	N=16	N=19
	C%	NC%	C%	NC%
Yes	68.75	52.63	81.25	60
Perhaps	18.75	5.26	12.5	20
No	12.5	31.58	0	20
Don't know	0	10.53	6.25	0
T-test	**p = .14**		**p = .04 ***	

* Significant at 10% level

I am inclined to interpret this as a fervent desire on the part of the confessed to see this happen rather than a statement of belief that the government actually intends

[263] Confessed prisoner, male, 63 years old; prison PCK. 23 August 2004.

reconciliation. In the words of a confessed prisoner, "The government did the impossible because it prefers reconciliation. It could have killed all of us who participated." He continued, "But if the government *really* wanted reconciliation, it would be done. But it has no will. It is the government that prevents people from reconciling. We cannot reconcile when still in prison. If the government wanted (reconciliation), it would let us go to ask people for forgiveness…this is only possible if we are living with them."[264] Sometimes the explanations are more diffident and even ambiguous. Another confessed prisoner said, "Law comes from leaders. *If* this law is merciful, that is a sign that the government is merciful. I know that it teaches reconciliation….If the leadership favors reconciliation, it can be realized…There are no obstacles to reconciliation because the government is willing to make it possible."[265] If anything, their explanations indicate doubt that government incentives represent or measure up to a genuine reconciliation.[266]

4.5.5 Information exposure

"When you confess, you do the government's work…they have treacherous plans…I would not make the mistake of confession…"[267] If they did not trust the government and feared indiscriminate punishment, it would make sense for the accused to hold out from confessing as long as possible. The confessed certainly used phrases like "I gave in", "it was no use" to describe how they reached a point where it did not seem like a good option to refrain from confessing. Is there evidence of holding out?

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[264] Confessed prisoner, male, 39 years old, prison PCK 16 August 2004
[265] Confessed prisoner, male, 47 years old, prison PCK, 8 September 2004
266 Jean Hatzfeld interviewed prisoners who had confessed. They responded in similar ways when they spoke of a "left over pardon" in reference to the government's offer of reduced punishments. See Jean Hatzfeld (2005), p202
[267] Non-confessed prisoner, prison K, male, 38 years old. 6 September 2004.

i. Of 18 prisoners who had confessed, one-third held out for 7-9 years each, one-third held out for 5 years each, and the remaining third held out for 1-4 years each before confessing.

ii. One respondent confessed in 2004 and he had already spent 9 years in prison. Of the 6 respondents who confessed in 2003, for instance, 1 person had spent 9 years in prison, 3 people had spent 8 years, 1 person had spent 5 years and the remaining person spent 1 year before confessing. This suggests that the accused do tend to hold out as long as they possibly can.

But at what point does it make sense for them to "give in"? One possible explanation was the amount of information available against the accused. The government required denunciations of all alleged accomplices by those who wanted their confessions legally validated. The accused sometimes named accomplices falsely[268]; at other times, they denounced others with a degree of satisfaction. "The ones I committed crimes with were at home and I wanted them to be brought in here (prison)…why should I suffer alone?"[269]

This hypothesis on information exposure is compelling considering that social networks played an important part in genocide. People were able to mobilize family members, friends and neighbors as they joined groups that had already begun killing Tutsi. People tied to these networks now found themselves in the same prison. With the confession of each additional person within this network, more information was likely to be available on those who had not yet confessed. Table 4.13 shows that the confessed in my sample did have higher numbers of network members in prison who

[268] Please see chapters five and six on manipulations and false information generated in the gacaca courts

[269] Confessed prisoner, male, 39 years old, prison PCK 16 August 2004

had also confessed. The non-confessed had fewer numbers of network members in prison who had confessed. The difference between them is statistically significant [T test (p value= 0.01)]. [270]

Table 4.13: Information exposure and confessions

TABLE 4.13	No. of C	No. of NC
No prison network reported	9	10
Percentage of network members who have confessed (for those who reported a prison network)	No. of C	No. of NC
0-30%	1	6
30-70%	1	2
80-100%	5	1
Total	N=7	N=9
T-test	**p = 0.01***	

* Significant at 10% level

This is a scenario then where some accused 'tip over' and virtually 'surrender' their confession while there are others who hold out until they too decide to capitulate pressured by circumstances largely outside of their control (namely the amount of information against them produced via denunciations). Their knowledge of the law tells them that it would make sense to 'tip over' and confess in order to take advantage of reduced sentences. They know that the penalties for a possible guilty verdict for

[270] Coding for prison network members who have confessed: 0-30%= 1; 30-70%=2; 80-100%= 3.

those who have not confessed are very heavy. Seventy seven percent of those who had confessed mentioned reduced punishments as the main reason they had confessed.

4.6 Allocating responsibility for the past: The consent-effect

On the issue of responsibility for crimes perpetrated in the recent past and the historic problems handed down from the more distant past, the confessed and non-confessed diverged in their responses in a systematic way.

Across all of the questions I asked on the allocation of responsibility, the variation was striking. The non-confessed systematically exonerated Hutu elites, primarily blaming the RPF for genocide and Tutsi regimes of the past for other historic problems; the confessed however systematically exonerated Tutsi elites, delegitimizing Hutu elites instead by holding them primarily responsible for their problems.

On the issue of identifying those periods in history in which relations between the two groups had taken an important downturn (table 4.16), the non-confessed tended to point to periods of rule by Tutsi elites (C= 35.71%, NC=70%), while the confessed maintained that the problems of the past stemmed from the bad politics of Hutu regimes or the bad policies of the colonial government (C= 64.28%, NC= 25%).

Asked specifically about genocide (table 4.14), the non-confessed exonerated Hutu elites arguing that the RPF was primarily responsible (C=28%, NC= 53%). In contrast, the confessed did not primarily blame the RPF, choosing instead to say that Hutu elites should be held primarily responsible (C=50%, NC=20%).

To probe if the tendency of the non-confessed to exonerate Hutu elites was systematic, I asked respondents about the relative role of Hutu elites vis-à-vis ordinary Hutu in the genocide (table 4.15). Once again, the non-confessed refused to blame

Hutu elites across a series of questions, appearing willing to blame ordinary Hutu, that is, people like themselves. The confessed, however, tended to put the blame squarely on the role of Hutu elites.

This is an important variation in their responses not only because it is systematic across all the questions on allocation of responsibility, but because it is also puzzling in light of the responses of the confessed to previous questions. First, both confessed and non-confessed believed that the RPF regime was discriminatory, guilty of crimes and could not be trusted. They likened the RPF to previous periods of oppressive Tutsi rule. Yet when confronted with the question of allocating blame, the confessed refused to hold Tutsi elites accountable for the troubles in any given period in Rwandan history.

Table 4.14 shows that the confessed hold the Hutu regime primarily responsible for genocide in contrast to the non-confessed who argued that genocide was the

Table 4.14: Allocating primary responsibility for genocide

TABLE 4.14: Primary responsibility	C% N=18	NC% N=15	Primary responsibility summary	C% N=18	NC% N=15
Self-defense against RPF attack	16.67	33.33	RPF responsibility	27.77	53.33
President's death caused by RPF	11.1	20			
Tutsi wanted domination over Hutu	5.56	6.67	Historic ethnic fear	22.23	20
Tutsi had a genocide plan of their own	16.67	13.33			
Hutu leaders in government	50	20	Hutu leaders in govt	50	20
Don't know	0	6.67	Don't know	0	6.67
T-test	**p = .09 ***				

*Significant at 10% level

culmination of a war fought in self-defense against the RPF invasion and the assassination of their President by the RPF. The p value shows that the difference is significant.[271]

Table 4.15 shows that respondents differ on how they allocate responsibility for genocide between Hutu elites and ordinary Hutu. The majority of those who had confessed saw the role of top leaders as significant in contrast to the non-confessed who denied that top leaders had a role and insisted on the responsibility of ordinary Hutu. The p values show that the differences are highly significant. Interestingly, the confessed and non-confessed agree on the involvement of local leaders. This probably indicates that despite the significant difference in the emphasis on the role of elites or ordinary perpetrators, the confessed and non-confessed agree there was coercion and pressure involved at the local level.

Table 4.15: Allocating responsibility for genocide on Hutu elites versus ordinary perpetrators

TABLE 4.15: In your opinion, how important	Government orders		Local leaders' pressure		Ordinary Hutus' greed for property		Divisionist ideology popularized by the govt		Govt incited killings	
were the	C%	NC%	C%	NC%	C%	NC%	C%	NC%	C%	NC%
following in causing genocide?	N=16	N=20	N=16	N=20	N=16	N=20	N=16	N=20	N=16	N=20

[271] Coding: RPF responsibility and historic ethnic fear=1; Hutu elites (government leaders)responsible= 2

Table 4.15 continued

	Government orders		Local leaders' pressure		Ordinary Hutus' greed for property		Divisionist ideology popularized by the govt		Govt incited killings	
Important	75	15	87.5	75	45	80	68.75	25	68.75	30
Not important	18.75	55	12.5	15	55	10	12.5	60	18.75	55
Don't know	6.25	30	0	10	0	10	18.75	15	12.5	15
T-test	**p = 0.00 ***		**p= .43**		**p= .06 ***		**p= 0.00 ***		**p = 0.00 ***	

* Significant at 10% level

In locating the historic time period that marked the origin of the Hutu-Tutsi conflict, the single largest opinion among the confessed pointed to the colonial period, shifting the primary responsibility for the oppression of Hutu onto the colonial powers, thereby exonerating Tutsi elites. Yet they have already indicated as they explained how Hutu-Tutsi group identities had evolved, that the exploitation of Hutu had begun prior to the arrival of the colonialists. In contrast, the non-confessed blamed Tutsi elites. They were divided almost equally between those who pointed to the pre-colonial Tutsi dominated monarchical regime and those who mentioned the initiation of the war by the RPF in 1990. Here again, the difference is highly significant as shown by the p value below (table 4.16)[272]

[272] Coding: Tutsi elites responsible (pre-colonial past or 1990-94 civil war)= 1; exonerate Tutsi elites (blame displaced onto colonial administration or the social revolution of Hutu)= 0

Table 4.16: Allocation of responsibility for the historic Hutu-Tutsi problem

TABLE 4.16	Origin of Hutu-Tutsi problem	
	C% (N=16)	NC% (N=19)
Pre-colonial period (ie. King's elite Tutsi admin)	21.43	35
Colonial period	42.85	10
1959 Social Revolution of Hutu	21.43	15
1990-94- civil war	14.28	35
Don't know	0	5
T-test	**p = .03 ***	

* Significant at 10% level

The confessed, like the non-confessed, said that they believed the RPF was Tutsi dominated, discriminatory and guilty of war crimes. Yet the confessed refused to hold Tutsi elites primarily accountable for any portion of Rwanda's turbulent history. There is thus a perceptible difference in the politics of the confessed vis-à-vis the non-confessed. When the accused talked about reconciliation, for instance, 66% of the confessed and 72% of the non-confessed mentioned that there was an important "role of government". Their explanations indicated that they meant very different things by this. The confessed hoped that the government would forgive them and release them from prison as promised. Some of them talked about the "good rule of this government." In contrast, the non-confessed responded that the government should admit its crimes and be prepared to negotiate politically with its opponents in exile. They harbored hopes of regime change. "We need a roundtable to discuss the issue (of

reconciliation)…we need a dialog…otherwise there will be no peace"[273]; "The way out is power sharing…there should be a political solution"[274]; "Reconciliation can be done by a ceremony in which political leaders acknowledge their mistakes…without hypocrisy and dictatorship."[275]

In contrast the confessed said, "Hutu had their chance and ruled badly. It is now the Tutsi turn to rule as they are wiser…"[276]; "The obstacle to reconciliation is that there are extremists in exile… even though they are few and powerless, they try to obstruct the government."[277] A woman whose seven year old son was killed by RPF soldiers during its advance on Kigali in 1994 said, "The government that was there was replaced by a new one which has stopped the antagonism…it gave peace to everyone. Now we have no more problems. Even news from outside the prison tells me there is no problem any more…This government's power lies in the trust we all have for it."[278] I identify as a 'consent-effect' the willingness of the confessed to support the political status quo and their unwillingness to hold ruling elites accountable despite not believing in their moral authority to govern.

4.7 Summary table of hypotheses and indicators

Table 4.17 presents a summary of the hypotheses each of which is linked with the indicators used in the survey questions. This will help to evaluate the findings that are presented in the final section of this chapter.

[273] Non-confessed prisoner, male, 49 years old, prison PCK 27 August 2004
[274] Non-confessed prisoner, male, 52 years old, prison K, 9 September 2004
[275] Non-confessed prisoner, male, 58 years old, prison PCK, 25 August 2004
[276] Confessed prisoner, male, 34 years old; prison PCK. 31 August 2004.
[277] Confessed prisoner, female, 42 years old, prison PCK, 19 August 2004
[278] Confessed prisoner, female, 48 years old, prison PCK 22 August 2004

Table 4.17: Hypotheses and indicators used in survey questions

Hypothesis	Indicators used in survey	Reasons
Moral Authority	-War crimes or genocide committed by the RPF -Genocide as self-defense against RPF attack	To see if respondents believe that RPF has committed crimes or has acted in a manner for which it should be held accountable
Ideology	-Attitudes toward survivors -Attitudes toward commemoration -Attitudes toward punishment and guilt	To see if respondents demonstrate strong anti-Tutsi attitudes: unsympathetic to survivors' needs, dismissive of the need to recognize the enormity of genocide, or evince lack of remorse
Identity	-Class origins -Social mobility -Same ancestor origins -Racial origins	To see if respondents believe identity is premised in antagonistic or non-antagonistic relations between Hutu and Tutsi groups
Earlier periods of Tutsi rule	-Perceptions of justness of pre-colonial rule -Basis of that conflict	To see if an earlier period of Tutsi rule was perceived as just; if not, to inquire into the source of that conflict

Table 4.17: continued

Hypothesis	Indicators used in survey	Reasons
Power and intent	-Discriminatory intent -Discriminatory actions -Power to crush opponents	To see if RPF elites were perceived as acting in a discriminatory manner; deliberately intended to discriminate against Hutu and had sufficient power to crush dissent
Information exposure	-Number of individuals within respondent's social network in prison who have already confessed	To see if those who confessed had higher numbers of network members who had already confessed and denounced them in the process
Allocation of primary responsibility -for the historic legacy of the Hutu-Tutsi problem - for genocide "Consent-effect"	-Identify historical period at root of historical legacy of conflict -Primary responsibility for genocide	To see how respondents allocate responsibility between Hutu and Tutsi elites when asked to compare across historical periods in order to locate the distinct period when ethnic relations took a downturn (that is, identifying those who were in power at the time); to see how respondents allocate responsibility between Hutu and Tutsi elites for genocide; to see if respondents differ on the role specifically of Hutu elites during genocide.

4.8. Conclusion: Confessions and surrendering consent

From the summary of findings (table 4.18) we can see that the confessed are significantly different from the non-confessed with respect to information exposure and the manner in which they allocate primary responsibility for the problems of the recent and more distant past. On all other counts for which data is presented in this chapter, there is no statistically significant variation between the confessed and the non-confessed.

Table 4.18: Summary table of findings

TABLE 4.18 : **Findings**	**Confessed**	**Non-confessed**
Moral authority	Ruling elites lack moral authority- Responsible for crimes against Hutu that are unaccounted for	
Ideology	Negative stereotypes about Tutsi elites	
Identity	Historically conflictual	
History-earlier periods of Tutsi rule	Oppressive and unjust	
Power and Intent	Discriminatory and powerful	
Information exposure	Higher likelihood	Lower likelihood
Allocation of responsibility "Consent-effect"	Exonerate Tutsi elites	Exonerate Hutu elites

Given their beliefs about the discriminatory and oppressive rule by RPF elites in particular and Tutsi elites in general, it is not surprising that the accused talk about the "mistake" of confession. They fear the possibility of indiscriminate punishment and hold out as long as they can until they are so exposed by the accumulated denunciations against them that they do not expect to withstand scrutiny at trial. Alluding to their vulnerability, one confessed prisoner said, "[the RPF] holds all of us in its hands."[279] However, having been forced to "give in", they attempt to hedge against the possibility that the government can respond with indiscriminate punishment now that they have effectively incriminated themselves. For these very vulnerable people, the 'consent-effect' is intended to work like an insurance policy. It produces a politics where people support the status quo in the hope that the flow of real and promised security guarantees will not be withdrawn.

[279] Confessed prisoner, male, 34 years old, prison PCK, 31 August 2004.

CHAPTER FIVE

THE SOURCES AND EFFECTS OF INFORMATION EXPOSURE

5.1 Introduction

This chapter builds on the finding that information exposure is associated with confession. I found that those who had confessed in prison had higher numbers of network members who had also confessed. This suggests that mutual denunciations generated by way of confessions leads to the accumulation of information against individuals within a pre-existing network till a point is reached where confessing becomes a more reasonable option than holding out. This chapter elaborates on the finding and draws on data from outside the prison. It has three main objectives: to show the various mechanisms by which information becomes available, to use evidence from the trials to show that information availability is indeed associated with confessions, and to explain how the evidentiary processes of the gacaca court work such that the accumulation of information against an accused individual increases the likelihood of conviction.

Information becomes available through three main sources: betrayal confessions that involve mutual denunciations[280] between two or more accused, manipulative denunciations that appear to be patently false and involve accusations against an individual who has hitherto not been accused, and witness testimony. Information on

[280] A symposium on denunciation practices finds that denunciations can occur in all political contexts but they are more virulent in authoritarian states because denunciations are rewarded. Also, denunciations are always dependant on local struggles. The more denunciations emerge at local level, the less need for police control because people police each other and censor themselves. See Sheila Fitzpatrick and Robert Gellately (1996), pp747-767. See also Sheila Fitzpatrick (1994). Thus, denunciations are in themselves a strategy of political control. In this chapter however, I focus on how denunciations breed on local manipulations and work through pre-existing networks of people known to one another. I show how the information generated through denunciations is associated with confessions, and how this information is processed by gacaca courts to arrive at a verdict.

the accused is generated as individuals denounce others. In the six trials I observed, the confessions of six defendants led to the denunciations of 51 people. This prompts those who have been denounced to respond to the 'betrayal' with counter-confessions and denunciations of their own. Research on the genocide in Rwanda has shown that perpetrators rarely acted alone. They usually moved around in groups of 11-30,[281] their members were neighbors, friends and even relatives. My research shows how confessions by one or more individuals in these groups prompt others to follow suit. The feeling of betrayal may push some to retaliate by means of a confession immediately; others choose to hold back and track how things evolve. But every additional confession by members within this network generates more information on an individual who is still holding out, till such time that it becomes a more realistic option to 'tip over' and confess because there is little chance that he will be able to defend himself successfully in the gacaca court given all the information that is already available. It is in his best interests to confess in hopes of a reduced sentence.

Betrayal confessions are different from manipulative denunciations in that the latter appear to be result of ad hoc interest-based coalitions cobbled together to accuse someone. In the absence of forensic, photographic or other kinds of evidence commonly submitted at criminal trials, the availability of information is critical to secure a conviction or determine the innocence of an accused individual.

I show that evidentiary practices in gacaca courts work against those who confront the weight of accumulated denunciations. Judges have no other means of corroborating the "truth content" of accusations other than to assess how many people accuse someone and whether the narratives generally point in the same direction. This produces an environment of uncertainty in which manipulations are possible as people

[281] Scott Straus (2004)

bandwagon to secure the release of some and implicate others and defendants try to maneuver if they can to secure the support of those who will back them at trial. The general atmosphere of uncertainty is compounded by the lack of access to defense counsel. In the prison interviews, there were some among the non-confessed who expressed deep uncertainties about facing a gacaca court: "Survivors tell lies"[282]; "Judges can be bribed easily".[283] Others believed that they stood a chance at proving their innocence. The responses were typically along the following lines: "I will be among people who can defend me"[284]; "evidence (in my defense) is readily available amidst people who know me".[285] However, data suggest that uncertainty about outcomes is reduced as information gradually begins to accumulate as more people back the same accusatory narratives. It then becomes more likely they will be unable to defend themselves eventually. The confessed spoke from their own experience: "The whole truth will come out in gacaca… even those who have not confessed can be found guilty"[286] ; "You will be in front of people who know what you did- the truth will come out and those who are guilty can be judged."[287]

It is important to note that the information that has accumulated against someone can be true or false even though certain accusations appear to be more patently false than others. Denunciations may sometimes be a complete fabrication. Then again, people may hold on to a piece of information they know to be true only to use it against someone when they need to. A confession may be used not only to retaliate against someone who has already confessed and denounce others who have not yet confessed but also to implicate the innocent. All this adds up to an environment that is

[282] Non-confessed prisoner, male, 58 years old, prison PCK 25 August 2004
[283] Non-confessed prisoner, male, 52 years old, prison K, 9 September 2004
[284] Non-confessed prisoner, male, 49 years old, prison PCK 10 September 2004
[285] Non-confessed prisoner, male, 38 years old, prison PCK 18 August 2004
[286] Confessed prisoner, male, 30 years old, prison PCK 17 August 2004
[287] Confessed prisoner, male, 42 years old, prison K 7 September 2004

saturated with information- rumors, accusations and counter-accusations, both true and false- with no guarantee that the judges, who are generally neutral if they are not interested in the outcome of that case, will be able to accurately determine innocence or guilt. The odds are particularly stacked up against an accused when a large number of confessed have denounced him or a local coalition stands against him for reasons that have little to do with genocide and he is unable to put together a counter-coalition in his defense.

Data for this chapter are drawn from ethnographic fieldwork, observation of the proceedings at six trials and trial transcripts based on 46 hours of testimony at the gacaca court in Masaka sector in 2005. The denunciations, local level manipulations of witness testimony and allegations of false accusations are not atypical of what happens in gacaca courts around the country. During the pre-trial hearings that I observed in 2004, judges, survivors and witnesses reported similar cases in each of the four sectors that I visited in the north, west, south and central parts of the country. This is not surprising given that much of this is a response to the way that the gacaca process is structured: the over reliance on testimonies when the reality is that people often testify in ways that suit their best interests and a degree of autonomy at the local level that allows local power brokers to engage in their power struggles and manipulations around the work of the courts.[288] I draw on data from Masaka sector because I spent the maximum time there. I lived in the community and observed the actual trials there as well.

This chapter is organized into two main sections: First, I show how the rules of evidence work and why information availability matters. I use trial data to show that confessions are associated with information availability. In the second section, I show

[288] This is the subject of the next chapter.

how judges rely on information availability to determine the veracity of defendants' claims about innocence and guilt. When on balance, the information from manipulative denunciations, witness testimony and betrayal confessions are stacked up against those who are accused, it is hard for them to prove they are innocent. In contrast, when the information generated is stacked up in their favor, it is difficult for the charges against them to stick.

5.2.1 Rules of evidence: information availability

Judges at the trial court estimated that they would probably make an erroneous judgment in one of every twenty cases.[289] They seemed confident that they would be able to distinguish between true and false testimony, parse out incomplete confessions from the false confessions and, in the case of the non-confessed, make an accurate determination of innocence or guilt.

Yet there are few robust verification mechanisms at the disposal of the judges. Referring specifically to the problematic nature of treating confessions as the "gold standard for evidence", a prominent human rights organization on the ground reports, "it is not unusual for inmates to make partial confessions, or confess to minor infractions, a lot less serious that those that they have actually committed. Some accused inmates, but also some who were released, try to present credible testimony (since it is required by law for the confession to be admissible) which in fact spares the true perpetrators. Thus, deceased or exiled individuals, or those with whom they have personal disputes are accused… Testimony provided by the accused themselves, especially for crimes as serious as crimes of genocide, are always a source of problematic information. As we have seen… they are often characterized by

[289] Informal conversation at a bar with the judges of the trial court, Masaka sector, July 2005

omissions, half-truths or lies. As long as Gacaca or ordinary courts have not seriously verified the truthfulness of the confessions, they should not be taken as conclusive evidence. They would remain confessions "subject to" verification….The law makes provision for this verification, but the practice of checking the confessions seems at present to be insufficient, although we are well aware of the difficulty of this task in the particular situation of Rwanda after the genocide."[290]

I found that judges used methods of corroboration to verify information that emerged during trial proceedings. They tried to triangulate between sources of testimony. The witnesses they summoned included genocide survivors, Hutu relatives of Tutsi victims, Hutu in whose homes the victim was killed, the accused who had confessed as also the accused who had not confessed but were summoned to testify because they had been named as accessories or witnesses to the crime. Sometimes this method was not very helpful as the testimonies varied, contradicting one another on the details of the case. Nevertheless, it allowed the broad contours of the case to emerge. For instance, if all the witnesses recalled seeing the defendant leading the attack but differed in their recollections about what weapon he was carrying or whether he, not someone else, had delivered the death blow, judges appeared to be satisfied with the determination that the accused was indeed present at the attack in a leading role.

Table 5.1 provides an example from trial #6. In column two, AC denounced his accomplices to the array of crimes he was charged with. Columns 3-8 show that six individuals testified to corroborate the truth-content of the confession provided by defendant AC. Note that AC himself is mentioned in all of their testimonies which makes it difficult for him to maintain he is innocent.

[290] Penal Reform International (2004, May), pp12-13

Among the people who testified at the trial, three are individuals who are not accused but who witnessed one or more of the crimes AC confessed to committing; the other three are individuals co-accused with AC whom AC has denounced as part of this confession. Among the three individuals who are co-accused and who testified, two have confessed denouncing AC in turn while one still holds out despite being named by the others. The person who was holding out (see column 8) denounced a number of people, including those who had named him. The rows indicate that the people whose names have come up repeatedly have confessed.

Three important points emerge from table 5.1: First, the information against AC was derived from varied sources: confessions and denunciations by co-accused as well as by those who witnessed the crime as onlookers. Second, in the absence of other kinds of evidence, information availability matters if judges are to determine innocence or guilt. After comparing the available information with AC's account of his actions, the defendant was judged to have entered a full and complete confession and found eligible for a sentence reduction. If his account did not measure up to the information available against him that had been corroborated by varied sources, he would be treated as someone who had not confessed but found guilty and liable for severe penalties.

The accused are very sensitive to the information available against them. The more information available out there, the more detailed the confessions become. For instance, in reviewing his confession before the gacaca court, AC left out the fact that he had been carrying a machete with him on the day of the murder in which he was implicated. Leaving this piece of information out allowed him to claim that he had not been outdoors intending to join the killing but that he had been out that morning looking to purchase some goats when he encountered a large group of killers who

Table 5.1 Triangulation across sources of testimony to verify the confession of defendant AC. Gacaca court, trial #6, Masaka Sector, 2005

1	2	3	4	5	6	7	8
TABLE 5.1	Defendant **AC**	Eye Witness	Eye Witness	Eye Witness	Co-Accused-confessed **NJ**	Co-Accused-confessed **GB**	Co-Accused-hold-out **NTW**
Confessed		AC	AC	AC	AC	AC	AC
Confessed	**GB**	GB	GB	GB		GB	GB
Confessed	**NJ**	NJ		NJ	NJ	NJ	NJ
Confessed	MO	MO		MO		MO	MO
Dead	KA			KA	KA	KA	
Hold out	**NTW**				NTW	NTW	
Confessed	NZA	NZA		NZA	NZA		NZA
Confessed	SB					SB	
Hold out	MV						
Confessed	GT						GT

pressured him into joining them. Here is an excerpt from the trial that shows the defendant revising his confession when he was accused of carrying a weapon.

Judge*: Where did you find the victim?*

AC*: I found him where we had been told he was hiding. He was in the cowshed.*

Judge: *What did you have as a weapon at that time?*

AC: *I had nothing at that time*.

Judge: *What did you do after that?*

AC*: We continued on our way up the hill until we reached the place where the attackers were waiting…After I had seen that I could not do anything for him (the victim) and I didn't want to see his death because I knew him…I left immediately and went away.*

(The judges berate him for betraying a friend and follow up with numerous questions)

Judge: *Tell us if you went to other places to attack.*

AC: *I did not participate in anything else*.

Judge: *If there is evidence showing that there are other attacks in which you participated do you accept to lose the case? Your confession will be rejected.*

AC: *If that evidence is there and I face the people who accuse me, you can punish me according to the laws of the court….No one accuses me of anything else.*

(Four witnesses testify none of whom raise any new issues for AC. The fifth witness has been accused in the same case by AC. He claimed that AC had been carrying a machete with which he had beaten his captive Tutsi friend)

Judge: *Where did you see AC?*

Witness 5: *I saw him in the place called…near the cell…*

Judge: *What were you doing there?*

Witness 5*: I was going to see a friend because I needed to return some money he had lent me to buy salt…*

Judge: *Who did you meet at that place?*

Witness 5: *I met an attack in which there was AC and …..* (he names four other people)

Judge*: What were they doing?*

Witness 5*: They were guiding the victim who was telling AC "Even you who knows me and who did business with me... What did I do to you?" AC had a umupanga (machete) in hand and he beat him with the handle.…They took him until they reached the ruins of X's home…It was there that they killed him.*

(This not only raised the issue of the weapon that AC had denied he had been carrying but also implied that AC had been present at the killing which he had also denied)

Judge*: From other peoples' testimony, we learnt that they (AC and accomplices) took the person and left him with you and others and then went away.*

Witness 5*: That is a lie. These testimonies are different from what they said in the cell*[291]

Judge: *If we find that the testimonies are the same, will you accept that you lied to the court?*

Witness 5*: I ask you, the court, to pursue the person who accuses me and ask him to give tangible evidence that what he accuses me of is true. I saw them taking him (victim) away…My destination was in the opposite direction of the place they were taking him to.*

[291] Referring to the pre-trial testimonies in gacaca courts at cell level

(When the trial reconvened the next week, AC produced a letter in which he confessed to having a weapon)

Judge*: If you were with a weapon, then how likely is it that you were out on a search for farm animals when you met the group headed by…?*

AC*: I have said that I own a cabaret (bar) so I needed a machete to kill the animals I purchased.*

Judge*: But someone who goes to buy farm animals generally carries a stick, not a machete.*

AC*: I took a machete because it was a time of war. …But I want to add that I left the person (victim) with the group and went away.*

Judge: *Is there any evidence that you left the victim alive when you left?*
AC*: The people who were with me at that time will testify to it.*

We can see that confessions are sensitive to information exposure. The final point from the table above is that it shows the close correlation between information exposure and confession. Those who have confessed have been exposed, most of them multiple times by people who testified. This accumulated information is used as evidence against an accused. NTW (column 8) remains the exception here. Despite being named several times in this trial and in other cases pending before the court, he refused to acknowledge that he had participated in any of the crimes he was charged with. His name came up repeatedly in denunciations by others who testified during the six trials that I observed. He was rebuked by the judges and mocked by sections of the audience present at this trial and others in which he was pulled up to testify. It was

widely believed that with all the information available against him, he would not survive his turn at trial by pleading innocence.

Here is another example that makes the same point about confessions and information exposure but draws specifically on information generated via betrayal confessions. I use data from trial # 3 at Masaka sector. It corroborates my finding that the more people within a given network confess, the more likely it becomes that those who are still holding out feel the pressure to cave in. It becomes impossible after a point to insist on innocence when the weight of accumulated denunciations point in another direction and make the chances of a successful defense at gacaca increasingly remote.

Table 5.2 summarizes the information generated by the confession of the defendant in trial #3. The defendant Felicien confessed to 8 incidents in which he was involved. These included 7 murders and at least 2 incidents of theft and extortion. For each incident (see columns), the defendant denounced those who were allegedly involved as accomplices.

From this table, we can see that the same names keep coming up across different incidents of violence. These are also people known to one another from the same community. In fact, SN and GT are brothers; the defendant and SY are brothers; the others were friends before they denounced one another. Also, most of those people that the defendant has denounced multiple times have also confessed (see rows) and denounced him back in their testimonies at this trial.

Table 5.2: Denunciations of accomplices for each of the crimes the defendant acknowledged in his confession; Gacaca court, trial #3, Masaka sector, 2005

TABLE 5.2	Charge #1	Charge#2	Charge #3	Charge #4	Charge #5	Charge #6	Charge #7	Charge #8
	Death-Young boy	Death-Old man and son	Death-adult male	Death-adult male	Death-adult male	Death-adult male	Attack in another district	Theft-3 cows
Confessed	SN	SN		SN	SN			SN
Escaped prison	MK	MK		MK	MK		MK	
Confessed	NE	NE			NE			NE
In Congo		SY	SY	SY	SY		SY	SY
Dead		KJ				KJ		
Confessed				BM	BM		BM	
Confessed				GR	GR		GR	
Holding out			BV	BV	BV			
Confessed		GT	GT			GT		
Confessed			MI			MI		
Holding out		NN		NN				
Confessed		NZ						
No data		BU						
No data		NW						
No data		CP						

5.2.2 Information availability- the difference between innocence and guilt

The method of corroboration however is not foolproof. A particular narrative was taken to be true if there were a number of people backing the same story. The assumption was that one or two people could lie but not more. However, there is evidence to suggest that people collude with each other for a variety of reasons to implicate someone who may be innocent. Assuming that one or more judges are not vested in the outcome of a given case, relying on a strategy that assesses the veracity of testimony by the number of people supplying the same story is bound to be misleading. It creates a marketplace for buying and selling information. It is relatively easy to induce survivors to throw their weight behind false testimony. They may be bribed into doing so or they are so emotionally vulnerable that they tend to grasp at any piece of information that promises to identify the 'real' perpetrator. As long as multiple people corroborate the same story, it is taken as true but to determine if the story they supply is true or fabricated is difficult, perhaps even impossible. In the rush to process as many cases as quickly as possible (speed has been used as a yardstick to measure the success of gacaca courts[292]), it is nearly impossible to spend time conducting a thorough investigation into the testimonies provided.

I use an example to show that people are aware that the numbers strategy works in gacaca courts and bandwagon with each other to achieve their desired goals. In this particular case, a woman's name was added to the list of those accused of genocide crimes after some people came together in what appeared (to me) a case of manipulative denunciation. She failed to defend herself in the pre-trial hearings stage when confronted with this coalition against her and went to prison.

[292] National Service of Gacaca Jurisdictions (2007), p7

A large and wealthy Tutsi family that lived in one of the cells in Masaka sector was completely destroyed during the genocide. The head of the family, a very old man, was able to find refuge in the home of a Hutu friend. His body was found hanging from a tree at a time when genocide and war were coming to a close. People insisted he was consumed by grief at the death of his family and had committed suicide. However, a daughter who was married and lived elsewhere had survived and she began making her own inquiries. She had two arguments: She had been told that his hat was still on his head when the body was discovered. He had been too old to walk steadily, how could he have hanged himself? And how could his hat not have fallen off in the process? The name of a neighbor surfaced who had been spotted the evening prior to the hanging, carrying a length of rope identical to the one found on the old man.

This man quickly put together a number of people to defend himself and accuse someone else instead. He claimed he had seen a woman, Beatrice, tip off a group of attackers about where the old man was hiding. The Hutu host who had protected the old man till the end supported this story for reasons that are unclear. He also testified in gacaca that he had seen Beatrice tip off the perpetrators but when I interviewed him, he said he had neither seen nor heard Beatrice do so. He had simply agreed to side with this young man. Perhaps he feared he would be accused as an accomplice and was eager to displace the blame. The old man's daughter was eager to hold someone responsible and also supported this version of events. This group managed to get another young survivor on board. It is not clear if she was bribed but she later retracted her testimony publicly and apologized. Beatrice insisted that she had long standing property disputes with both of the men who had accused her. She was however

arrested, spent a few years in prison and was provisionally released on account of poor health.

The accused can prove their innocence however if the numbers are in their favor. Here is an example from trial #1. The defendant John had confessed to participating in five separate incidents that involved two murders and numerous thefts. As the trial was coming to a close and the judges prepared to deliberate in private on the verdict and sentencing, a survivor Jeanne stood up and asked to be heard. She insisted that John had not confessed the whole truth. She argued that although he had confessed to being one among those who had extorted a cow from her husband Michel in exchange for sparing her life, he had remained silent about the fact that he had tipped off a death squad about her whereabouts and led them to her home. John's confession was in danger of being treated as incomplete. This could render him ineligible for a reduced sentence. As per the law, he could be treated on par with someone found guilty without having confessed and thereby liable for heavy penalties. Although the judges were irritated at the prospect that the case would be prolonged because of this last minute accusation, they did not in good faith ignore the matter. As more witnesses were produced, no one supported the survivor's claims. Some witnesses deflected the responsibility onto others, some said they had no idea, and one witness turned around to accuse the survivor's husband of leading the attackers to her home. The judges determined that John was innocent of the latest charge; his confession was treated as complete and wholly truthful and he was rewarded with a reduced sentence.

The following excerpt shows how the judges reasoned as the trial played out:

Judge*: We have spent many days on the case of John.…John has confessed. Now a problem arises…Jeanne, have you not been aware that John was being judged?*

Jeanne: *I was not present when he was giving his testimony*

Judge*: But you had information on John. Why didn't you testify in the gacaca court of the cell?*[293]

Jeanne: *I thought he had given all the information*

Judge*: Did you not attend the cell meetings?*

Jeanne: *I attended them*

Judge: *Did you not ask what John said?*

Jeanne: *I didn't ask but I heard that he testified.*

(Audience murmurs; people shake their head as if they are unhappy with her response)

President of the concerned cell court (speaks up from the audience): *The crime he (John) committed was to steal a cow. He has accepted that and he has paid for it. So, the matter has been finished.*

Judge*: John, as a person who has confessed, why did you not testify on this matter?*

John (whose mother had died the previous day): *Let me respond as I sit down.*

A member of the audience (in a show of support to the defendant): *To me, it seems that it will be good to postpone his case because John is traumatized*

John*: I did not say anything about it because what I did was only to steal the cow and I accepted that and I paid for it.*

Judge: *Jeanne has asked who told the attackers there was an icyitso*[294] *(accomplice) in her house. Can you answer?*

John*: You can ask this question to others in the attack.*

[293] Referring to the pre-trial hearings that were conducted at cell level

[294] During the war and genocide, all Tutsi were referred to as accomplices of the RPF. Pronounced: ee-cheet-so

(Now the judges digressed from the question of the tip-off and pursued other questions around the incident of the extortion of the cow…Then the first witness was called and sworn in to tell the truth)

Judge*: G, tell us who told you that there was an icyitso in the home of Michel?*

G *(accused of being one of the leaders of the attack): A man whose name is Nyandwi (referring to Michel's nickname) met us in the valley and told us: "Please help me. They have attacked my house saying that there is an icyitso. Now please protect my wife so that they do not kill her. I shall give you a cow. He (Michel) came up to the road where we always shared a drink.*

(This testimony stood the facts of the case on their head. Until now, John's confession had revealed that the group had gone to Michel's home threatening to kill his wife and were placated only when they were able to extort the cow. Now, according to G's testimony, it appeared that not only had Michel had tipped them off about the whereabouts of his wife but that they had gone there to protect, not attack her. Some people in the audience suggested that Michel should be questioned because he had been present at the attack while Jeanne had been in hiding; therefore her accusation was based on hearsay. The judges decided to call other witnesses)

Judge*: You were one of the people who (later) ate a portion of the cow. Who said that there was icyitso in the home of Michel?*

P: (witness 2: accused of sharing in the spoils but not of participating in the attack): *I didn't eat the cow and I didn't hear who said there was icyitso. The person who led the attack to go and get the cow was K….I saw them going up with a cow. They were saying that if they did not find a cow, they would kill someone. When they were in*

front of Michel's house, they began to sharpen a machete to intimidate him so that they could be given a cow.

(The questioning continued but it was dark by then and difficult for the secretaries of the court to record the testimonies. The session was adjourned for the next week…The next session opened with judges asking broad questions to each of the witnesses before asking them about the tip-off)

Judge*: Swear first that what you are going to say is true. …*

Tell us the persons who attacked the house of Michel in 1994 and tell us that they did…

How did you see them?
Who was the leader of the attack?
Was Madam (Jeanne) there when you went?
Do you know who mentioned about icyitso?
S (witness 3): *I was a neighbor. I reached there after the attack had arrived. I didn't see who said icyitso.*

B: (witness 4): *I saw the attack which came to Michel's house. Many young people came with machetes and stones with the objective of killing the wife of Michel. I saw them wanting to go into the house by force, saying that if they were not given a cow they would kill him and his wife. …I saw them when they had arrived at the house. I didn't know who mentioned there was icyitso. It is they who will explain that.*

SK: (witness 5: accused of sharing in the spoils but not of participating in the attack): *I was standing outside my house. They asked me where Michel's house was. I said "I don't know". They asked me where the cows were. I said "I don't know". Then they put a machete on my neck but I ran away somehow. I didn't hear anyone mention*

icyitso….I saw them going towards Michel's house. I followed them…They took the cow and skinned it. They did not give me a share of the cow. I came back with nothing.

Michel (Jeanne's husband- witness 6): *I was preparing food for my children when the attackers arrived. They told me "We heard there is icyitso in your house. Now, give her to us or you will be killed in her place….One of them sharpened his machete as he stood with the others…Some of them went inside the house to check…Now, I ask John as a person who has confessed to tell me who it was that said there was an icyitso in my house. That is, if he is in the way of reconciliation.*

Judge: *Were you among the attackers?*

Michel: *No*.

Judge: *In 1994, every Tutsi was called icyitso. Can you give any evidence that there was in fact someone who had informed them?*

Michel: *That is known by those who attacked me.*

(Judges speak to John)

Judge: *John, you have been asked by Michel who accuses you…He asks you as a person who has confessed and understands that he is in the way of reconciliation to tell who informed you that there was icyitso in his house?*

John: *Nobody informed me that there was icyitso. I knew that woman (Jeanne) beforehand and I knew she was there.*

Judge: *You say you knew she was there. Was it you who informed those who went with you in the attack that there was icyitso?*

John: *No.*

Judge: *If there is evidence showing that you know who informed about icyitso but you refused to say it, will you agree to lose the case?*

John: *I agree to lose if there is anyone who testifies that it was me who gave information on icyitso.*

(At 3 o'clock in the afternoon the session was adjourned for the day. When the trial reconvened the next week, a prisoner who had confessed was brought in to testify)

Judge: *Tell us the truth that you know on John*

F (witness 7- co accused): *The truth that I know on John is that he went to Michel's house and ate a portion of the cow but he did not have any more of a role in that incident….There were a lot of people in that attack and I shall name them as I remember.*

Judge: *Michel had not been on the road to meet you that day?*

F: *No, he did not go on the road. We met him at his home*.

Judge: *You did not hear anyone saying that Michel had gone to the road?*

F: *He went nowhere. We met him at his home*.

Judge: *We had a problem of knowing who informed about icyitso in Michel's home. Icyitso was used commonly during the war….We conclude that John did not inform about icyitso.*

From the excerpts, it is clear that most witnesses confirmed that the visit to Michel's house was indeed an attack, that Michel was a victim of extortion and intimidation, and that the question of who informed the attackers that there was an accomplice in the home of Michel could not be definitively answered. At the very least, the testimonies did not definitively point toward John. Based on this, the judges concluded that John could not be held for the tip-off; in fact, they seemed to dismiss the idea that there had been tip-off in the first place and dismissed an accusation against him that could have otherwise jeopardized his confession and plea bargain.

On the whole therefore, information availability is crucial in the gacaca courts. When the balance of information is against the accused individual, it is difficult to avoid being placed on the list of the accused, avert arrest and ultimately to prove one's

innocence. Even those who have confessed run the risk of their confessions being rejected if the confession does not match the entirety of what is known through the information already exposed. In the first phase of trials, for example, 1015 confessions were rejected for being incomplete while 3579 confessions were accepted as valid. Of those confessions that were accepted, 556 were reconsidered at trial (presumably after the accused realized how much information they were actually confronted with).[295] However, even if an accusation really has some basis in fact, so long as the balance of information points in a direction away from the accused or at a minimum does not directly implicate the accused person, it is hard for those charges to be consequential.[296]

5.4 Conclusion

The testimony of eye witnesses or survivors is as important in generating information on the accused as are denunciations by co-accused who have already confessed. None of this is to suggest that the information is necessarily true or false. The proposition advanced in this chapter is that the more information accumulates against the accused, the harder it becomes to escape unscathed. The trial data show that confessions are associated with information exposure and that the confessed are sensitive to the degree to which they have been exposed. Information exposure matters because it is often the only evidence available in the gacaca courts and as long as that information can be corroborated by multiple sources, it is taken to be true.

The general population also fears entanglement with the activities of the court believing that people do not stand a chance at a reasonable defense if they are accused.

[295] National Service of Gacaca Jurisdictions (2007), p4
[296] John had, after all, admitted that he knew where Jeanne lived. It is not inconceivable that he could have tipped off the group about her whereabouts.

During my stay in Masaka sector, district elites were compelled to address a growing local panic. There were 9 public meetings in 3 months in which the residents of Masaka sector were involved. Six of these meetings were held to address gacaca-related problems. The biggest of these meetings was organized at the district. The weekly trial was postponed to permit people to attend the meeting instead. People were reminded that the accused are 'innocent until proven guilty'.[297] A survivor was berated publicly for allegedly making false accusations and people were urged to remain calm and monitor local affairs in the interest of the security of the community.

The gacaca system is set up in such a way that it does not take much to prove someone guilty. When I asked a young man why he did not attend the trials on a regular basis, he feigned alarm and throwing his hands in the air, he exclaimed, "Gacaca is very dangerous!"[298] He noted the activism of survivors who "know many things" and the proliferation of bribes and false accusations "out of jealousy" from which it was impossible to disentangle oneself. People know this and find it in their best interest to confess when they feel irrevocably exposed.

[297] District meeting. June 2005. People from all the sectors in that district were invited to attend. The meeting was conducted by the Mayor at which the police chief of the district and SNJG officials also spoke.
[298] Informal conversation in a bar with a Hutu youth;. May 2005. Masaka sector

CHAPTER SIX

JUDGES' AUTONOMY: ITS SOURCES AND EFFECTS

6.1 Introduction

This chapter has four objectives. First, it explains the structural context within which the gacaca courts operate and argues that judges are not only key drivers of the trials process but also important actors in local government. In both these roles, judges enable regime maintenance by serving the interests of ruling elites. Their work allows the gacaca courts to function at local level. The gacaca process generates testimonies and produces information on those who are accused which, as I have shown in earlier chapters, plays an important role in pressuring people to confess. Confessions are an important instrument in the production of political quiescence. That judges are embedded within government structures of power at the grassroots also enables state elites at the center to project power into local communities. I show that ruling elites have historically struggled to extend their influence over the hinterland and that they have needed allies at the local level to implement their policies. This enables them to govern from the center. In the post-genocide period, the regime is dominated by Tutsi elites while the vast majority of the rural population is Hutu. I show that judges are mostly Hutu and many of the judges in important positions on the bench are also members of the RPF. This suggests a process of co-optation at work in which these actors are tied into party structures as well as institutions of state such as gacaca courts and local government.[299] This enables ruling elites to politically regulate and govern the population from the center.

[299] The co-optation of local elites appears to be part of a larger strategy of rule by co-optation adopted by the regime. For an analysis of the co-optation by ruling elites of civil society actors and political parties that could potentially act as counterweights to the perpetuation of its power, see report by USAID (2002, November). The RPF government has emphasized that civil society organizations and

Second, this chapter argues that because of the dependence of ruling elites on local allies for everyday governance, continuation of the trials process and political regulation, ruling elites 'tolerate' spaces of relative autonomy at the local level. Judges also enjoy non-governmental sources of power such as important positions in various Churches and associations at the local level and have the influence to mold public opinion and mobilize the local population. Ruling elites have much to gain by ensuring the compliance of these actors with directives from above in lieu of which they cede spaces of relative autonomy that judges use to their own advantage. I show how judges are able to act as relatively autonomous actors within a state that is conventionally understood as top down and fully capable of controlling local affairs. Intervention from upper echelons of state are limited and usually delayed. As long as these actors comply in their capacity as gacaca judges and local elites, it is politically expedient for state elites at upper echelons to refrain from frequent and overt interference in local affairs.

Third, this chapter traces the effects of relative local autonomy upon gacaca processes. I show how judges are able to manipulate local processes to serve their own interests. Judges' ability to maneuver around the rules creates fundamental uncertainty about the outcomes of cases. They are able to secure the release of some people and have others added to the list of accused.[300]

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political parties should act as "partners" in the rehabilitation of Rwanda instead of acting primarily as a restraint on government or in opposition to its policies.

[300] Judges can authorize pre-trial detention, imprisonment for false testimony or for refusal to testify, preventive detention if they fear that the accused may attempt to flee, and can even order the seizure of property in certain cases. Concerned at the high number of arrests for refusal to testify and the frequent use of preventive detention permissible under gacaca law, international human rights organizations with a presence on the ground recommended that the government ask gacaca judges not to authorize arrests in the pre-judgment stages. Avocats Sans Frontieres, Danish Center for Human Rights, Penal Reform International and Reseau Citoyens Network (2005, October 17)

Finally, I show how judges use information strategically to secure the outcomes they want. This corroborates the findings of the earlier chapters that in the context of the gacaca courts, the more information accumulates against an individual (true or false), the less uncertain his fate becomes.

6.2 Judges: voluntary participation of interested actors

Rwanda has a history of state-driven popular mobilization- both routine (Umuganda[301]-development projects using peoples' labor), and in response to specific events (civil patrols[302] during insecure times, and most spectacularly, the genocide). Explanations for the state's ability to mobilize huge numbers of people are often structural. They dwell on the importance of well-organized state structures from top to bottom, the effectiveness of which is compounded by the fact that communities are so densely populated that non-compliers can generally be identified and punished.[303] Other explanations also emphasize the repressive goals of state elites who have routinely crushed dissent.[304] The models suggest that people participate because they are forced to comply or must make every effort to look as if they are complying.

The general involvement of the community in the gacaca process allows the government to argue that its success is contingent on the willing and enthusiastic participation of the population at large. Observers noted the imposition of fines and

[301] On the origins of umuganda and its institutionalization as policy, see a report from the Office of the President of the MRND (January 1990)

[302] Scott Straus (2006), chapter 8
[303] Scott Straus (2006), chapter 8
[304] Uvin argues that state elites have always preferred to get people to do something out of a threat of punishment rather than extending positive inducements and incentives. Peter Uvin (1998) , chapter 6

other coercive measures, for example, people may be punished with short prison terms for refusing to testify. They describe the process as state-driven and coerced. [305]

But the gacaca tribunals are distinctive in that 250,000 individuals[306] stepped forward to serve as judges without remuneration, even as the population at large has to be coaxed or coerced into participating. Most judges are Hutu, and appear willing to sit in judgment over fellow Hutu, knowing well that this is an unpopular task.

I find that gacaca judges with important positions on the bench are comprised of Hutu who are rural elites and able to use these spaces of autonomy to serve their own interests at the local level. They are able to get themselves elected as judges. They use gacaca to engage in power struggles that consolidate their position at the expense of their opponents, to maneuver around the rules in order to secure the release of friends and family, or to leverage the position towards a bigger political prize at the local level. Deviations and maneuvers by judges are allowed to go unchecked to some extent. Intervention from above occurs when local struggles that have gone on for a while cannot be contained threatening to disrupt order at the local level and derail the gacaca process or when district elites are interested in the outcome of a particular case.

Judges' power to deliver verdicts and their room for maneuver creates a great deal of uncertainty about the outcomes of individual cases in a gacaca court. For an individual with few connections to those with influence at the local level, a trial is like plunging into the unknown. "Only God can save me now" is a common refrain[307]

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[305] Lars Waldorf (2006a), pp. 422-432; Jennie E. Burnet (2007); Long time observers of Rwanda described it as a "state-directed system that is presently not an open forum" See Great Lakes Policy Forum (2003, January 9)

[306] These are the figures for judges in the first elections organized in 2001 in anticipation of setting up the tribunals. Successive gacaca laws have reduced the number of judges per tribunal. In the judges' elections organized in 2007, 169442 judges were elected. US Department of State (2008)

[307] Heard in the course of informal conversations while waiting for the trial to start or after the sessions were over; people would gather in groups and linger for a while before dispersing.

when someone is accused and called to testify. For the accused who have committed crimes in an area different from their place of origin, it is a truly troubling prospect to face a panel of judges who are completely unknown. In ordinary courts, the accused have confidence in the certainty of formal rules even though one may not know the judges and need not be familiar with the said legal procedures. In a gacaca court, however, the accused hope for the certainty of having familiar faces in the audience and on the panel because of their anxieties about the uncertainty of trial procedures and the relatively autonomous role of judges.[308]

Observations of trial proceedings suggest that in cases where judges have no stake in the outcome, they make a fair attempt to gauge the veracity of testimonies and decide on a verdict.[309] But despite their best intentions, judges can often be wrong, deciding cases on the basis of testimonies that cannot always be verified or arriving at a decision based on the number of witnesses for and against an individual. As long as the cases are processed without major disruption and judges are able to record testimonies and fill out the required paperwork, mistakes or deliberately contrived judgments often pass under the radar screen without being corrected.[310] The lack of

[308] People dreaded being called to testify by gacaca courts in general but they panicked when summoned by a gacaca court other than their own. A prominent resident of the area failed to show up at another court to testify despite being summoned three times. At the fourth summons, he finally dragged himself to the court where he was arrested for refusing to testify. Another person spent long hours in a bar, expressing his anxiety to all those who would listen, consulting his friends, acquaintances and even my interpreter and me before going to testify in the gacaca court of the adjacent sector. The general feeling was that they could at least hope to be treated fairly by those who know them but there were no such guarantees outside their own community.

[309] In five out of the six trials I observed, the judges were remarkably perceptive, asking quick follow up questions, returning again and again to the specific points on which the defendant could not provide satisfactory answers and for the most part were able to pick up on the contradictions in testimonies. In one trial, however, the president asked broad questions, did not push the defendant to clarify the fuzzier parts of his testimony and unless someone else (survivor or other witnesses) challenged the narrative (which no one did), they were willing to merely record what the defendant said. In this particular case, the defendant happened to be related (part of his extended family) to the president. I learnt this after the trial from a survivor and confirmed this information from another person who knew the family well.

[310] The accused do have the right to appeal under gacaca law. Of 7412 verdicts handed down by the trial courts in the pilot phase, 1354 were appealed by the defendants and 323 by the plaintiffs. The National Service of Gacaca Jurisdictions (2007), p4. The appeals are heard by a gacaca court designated for this

adequate oversight by a state that is generally preoccupied with control of local processes is explained by the spaces of autonomy enjoyed by local elites.

This chapter shows that structures of state are embedded in relations of power between the centre, the district and the cell. These relations explain how the centre 'broadcasts power' into the hinterland[311] and why it needs allies, not rivals, in local elites.[312] It presents data on judges in 5 cells of Masaka sector to show that judges are mostly Hutu, members of the ruling party and that there is a large overlap between judges and local elites. I demonstrate how judges use the relatively autonomous space 'allowed' to them to engage in power struggles and secure the release of friends and relatives.

6.3 Rwanda: The strong but weak state

The weakness of African states in projecting power from the center to the borderlands, or from the center to the local level has been much studied.[313] The Rwandan state is no exception. As the central kingdom expanded north, east and westward through conquest in the nineteenth century, it confronted problems of control and taxation. In the peripheral kingdoms, the Tutsi king Rwabugiri's tax collectors profited from taxation as much as the king did.[314] Attempts to successfully transplant local institutions in these outlying areas took time.[315] Not only was there a great deal of

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purpose. This does little to ameliorate the shortcomings inherent in the gacaca process. For a state that sees justice as a flagship project it is curious that it does not do more to ensure the manipulations can be kept to a minimum. In ordinary courts, the fairness of procedures generates confidence in the fairness of the outcomes. But because of the absence of procedural safeguards and the lack of explicit rights of the accused, some observers have argued that it would be desirable to have an appropriate mechanism for the judicial review of cases decided by the gacaca courts. See Kusi Hornberger (2007)

[311] Jeffrey Herbst (2000)
[312] Catherine Boone (2003).
[313] Jeffrey Herbst (2000); Catherine Boone (2003); Wim van Binsbergen, Filip Reyntjens, and Gerti Hesseling eds. (1986)
[314] Danielle de Lame, citing historian Alison Des Forges See Danielle de Lame (2005), p45
[315] Catharine Newbury (1978); David Newbury and Catharine Newbury (2000)

heterogeneity of pre-colonial social and political institutions across regions, but also local traditions were so resistant to change imposed from afar that after independence and abolition of the kingdom, the old dominant land-clearing lineages returned to the fore in parts of the north.[316]

After Rwabugiri's death, the central court's appointees in the outposts who had been poorly integrated in those areas returned to the centre and taxes ceased to be paid. During his successor King Musinga's reign, a rebellion in the north defied the power of both the Tutsi king and the German colonial administration.[317] It was under Belgian rule that the depth and reach of the state expanded. They reduced the power of elites at the central court and increased the authority of local chiefs.[318]

Many scholars emphasize the capacity of the state to mobilize the population and enforce its decisions at local level but this overlooks the duality of the Rwandan state which is also weak in that it has historically been premised in patronage-based, personalistic rule and has lacked legitimacy at the local level.[319] The rural population is withdrawn and secretive,[320] peasant strategies for dealing with state power are atomized and defensive,[321] and protest has often had its roots in small religious cults.[322]

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[316] Danielle de Lame (2005), p45; See also David Newbury (2001)
[317] Alison Des Forges (1986)
[318] Scott Straus (2006), chapter 8
[319] Peter Uvin (1998), chapter 6
[320] Lars Waldorf, citing anthropologist Danielle de Lame. See Waldorf (2006), fn 406

[321] Scott Straus (2006), chapter 8 ; A concurring analysis of strategies of the rural population within the context of pre-colonial and colonial state structures very similar to Rwanda's, see Thomas Laely (1997), p14
[322] Danielle de Lame (2005), pp253-254; See also Alison Des Forges (1986); David L. Schoenbrun (2006)

6.3.1 Two pivots between central elites and the local population

To understand how the state projects power into local areas, it is important to move beyond an undifferentiated notion of vertical state structures. Rwanda has 4 provinces in addition to the capital Kigali, with each of these units comprising between 3-7 districts. Every district has between 5-9 sectors and every sector has a number of cells which is the lowest political-administrative unit. There 30 districts, 416 sectors and 2148 cells.[323] Each cell is informally divided into clusters of ten households with each cluster electing a leader known as the *nyumbakumi.*

Schematic representations of the Rwandan state generally portray state structures as top-down[324] in which each level breaks down into its constituent units, suggesting a matrix of power in which influence, directives, resources and sanctions flow from upper echelons of state to lower levels [See Figure 6.1]. A more nuanced appraisal of how the state works in Rwanda should emphasize that the political, administrative, and developmental roles are different for each level of state.

As described in the earlier section, central elites have historically struggled to extend control over local populations. The district has emerged as a key pivot between the centre and the grassroots. The district is in physical proximity to the grassroots and more accessible from the center. The real distance between the capital Kigali and any given district may not be much but travel time is considerable. The tarmac road usually ends at district headquarters from where dirt tracks meander into the rural hinterland- the sectors and cells. The district also bridges the psychological distance

[323] Immaculate Bugingo (2006, April 27) This is after the administrative reorganization in 2006. Prior to this, there were 11 provinces in addition to the capital Kigali, 160 districts, 1545 sectors and 9165 cells.
[324] Straus describes state structures as "hierarchical, centralized and extensive" Scott Straus (2006), chapter 8; Prunier writes, "Genocide happened because not because the state was weak, but on the contrary because it was so totalitarian and strong that it had the capacity to make its subjects obey absolutely any order, including one of mass slaughter." See Gérard Prunier (1995), p354; Thomson argues that the policy of national unity is being implemented "top down in the guise of a policy of decentralization" See Susan Thompson (2007).

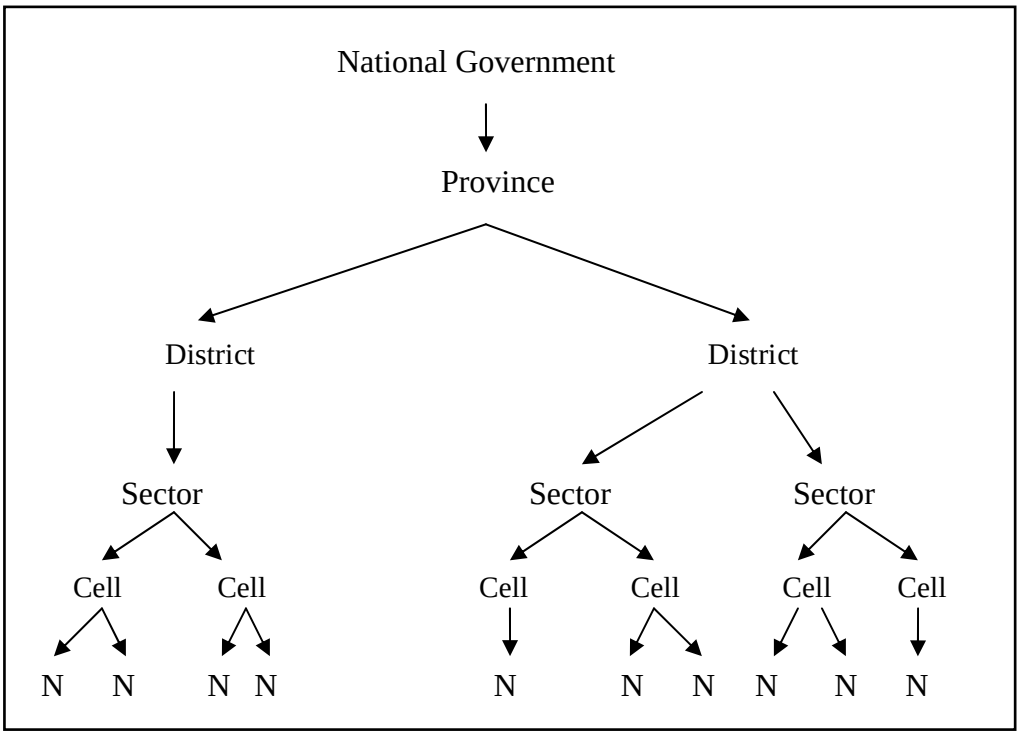

Figure 6.1: State structures in Rwanda

Source: Adapted from Scott Straus (2006)

between urban elites (*les évolués*) and the rural population. For the rural poor, Kigali is the center of power but a distant reality.

Orders and directives emanate from district officials to whom the local population is usually accountable. The apparatus of power is directly visible and experienced in the most immediate ways at the district headquarters. The police post, district courts, and even the district bureau of the SNJG (National Service of Gacaca Jurisdiction) are usually adjacent to the district Mayor's office. In contrast, there is no police outpost at the sector. There may not even be a building that serves as sector office. In government planning documents, the district is visualized as a necessary intermediary

in decentralized development; its role is to implement policies decided at the centre.[325] That the President of the Republic would appoint district Mayors in the pre-genocide era attests to the importance of the district as a key pivot between centre and the grassroots.

District elites however require the mediation of local elites at the sector and cells if they are to successfully regulate the grassroots population. The cell and sector are sites of primary identification for rural Rwandans.[326] Local elites at cell and sector level are few and identifiable; elections at the sector and cells generally involve a turnover amongst these same people. The sector's relationship with its constituent cells is more organic than the sector's relationship to the district and the sector-cell leadership is closely nested within grassroots power structures.

From the bottom up, the district is clearly perceived as an arm of the state. It is the place from where power flows into local communities. Ethnographic data show that in lived experience, the district is where people go to register complaints, request the intervention of the police or expect development directives but the district is not particularly embedded in the grassroots. The local population has always wanted to preserve its own autonomy against incursions from above. When elections were first introduced at the local level (in the late 80s), it was used by local people to "reduce the district to impotence."[327] People elected the most ineffective candidate as the cell's representative to the district; the most vigorous, energetic and sympathetic people were elected time and time again for cell committee positions.[328] Local elites belonged

[325] Draft presentation by the World Bank (2005, September 21)
[326] Scott Straus (2006), chapter 8
[327] Danielle de Lame (2005), p262
[328] Danielle de Lame (2005), p264

to extended families with social sources of power in terms of land, animals and connections to political and church authorities.[329]

Since the RPF dominated transition, the district leadership has been dominated by Tutsi while grassroots leaders are predominantly Hutu.[330] Given the starkly different experiences and interpretations of the war and genocide, the importance of having local elites on board for everyday governance and the continued operation of the gacaca courts cannot be underestimated.

The need for allies instead of rivals in the grassroots leadership was demonstrated in the local elections organized in 2001 when the RPF attempted to identify local Hutu leaders whose loyalty could be counted upon by co-opting them into the party.[331] The Second Hutu Republic under the MRND regime would appoint even sector and cell leaders.[332] For the center and for the district, securing the cooperation of local elites has been crucial.

6.3.2 The 'pivot' as a specific political relationship

Power does not simply flow downwards from the centre to the grassroots population through intervening structures. Instead, at the two main "pivots" of state- the district and the sector-cell levels - there is space for autonomy too. This space is allowed to local powerbrokers in return for their loyalty and cooperation. At each "pivot", local elites are able to leverage their position to secure for themselves a zone of relative autonomy.

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[329] Danielle de Lame (2005), p261

[330] In general, upper echelons of state are dominated by Tutsi who are in the ruling party, the RPF. In mid-2000, for eg., of Governors: 11 were RPF out of whom 9 were Tutsi. Of ambassadors, 8 were RPF out of which 7 were Tutsi. In Parliament, 61 were RPF out of whom 49 were Tutsi. In the army command structure, 8 were RPF out of whom all were Tutsi. See Filip Reyntjens (2004)

[331] International Crisis Group (2001), p9

[332] USAID (2002) report submitted to the Ministry of Local Affairs, Government of Rwanda on decentralization assessment, p17

It is not simply an administrative decision to 'tolerate' spaces of local autonomy. Recent studies on decentralization focus on the interests of local elites and the local sources of power they are able to draw on resulting in relationships between lower and upper echelons of state that constitute a delicate balancing of the needs and interests of both sets of elites.[333]

In fact, small deviations can be ignored so long as local elites routinely comply with directives from above. In Rwanda, sector and cell leaders are indispensable. It is difficult to organize mass meetings without their cooperation; access to intelligence in the rural hinterland cannot be had without their cooperation. Between the district and the center, there is also a very similar dynamic of relative autonomy versus control. On the one hand, there has been a move to make districts financially independent of transfers from the center. The national fiscal decentralization policy has been gradually implemented since 2002.[334] District Mayors are also indirectly elected by the population instead of being appointed from above as in the previous regime. On the other hand, with fewer districts since 2006, it is easier for the center to manage and monitor district elites.

6.3.3 Gacaca judges, local government and the SNJG

The political relationship between district elites and local elites is directly relevant for an understanding of the context within which the gacaca process plays out. The SNJG has a functioning office at the district. A SNJG coordinator for the district is appointed by SNJG officials at the province level or in Kigali. Equipped with a motorcycle, the district coordinator for SNJG travels from his office at the district to the sectors and even further to the cells in order to monitor gacaca cell and sector courts. The district in which I spent the most time comprised 6 sectors in all. One of these, Masaka sector

[333] See for example, Catherine Boone (2003)
[334] USAID/Rwanda (2004), p21,p 33.

(where I observed the gacaca trials) had 9 cells. Therefore, in any given week, a single SNJG official had to monitor approximately 54 cell courts[335] and 6 sector courts.[336] This was impossible given that proceedings at a single site could take an entire day. Sometimes there was no money to pay for fuel.[337] There is thus no SNJG oversight on a weekly basis either at the sector or at the cell courts.[338]

The trial and appeals courts for category 2 crimes are located at sector level, usually at the sector government office. If there is no such building, court sessions are conducted in a field or a school. The pre-trial hearings are conducted at the cell courts. Dossiers prepared by cell courts are forwarded[339] to the sector court where the trials of category 2 accused are held. Dossiers in category 1 are forwarded from the cell courts to the Prosecution department at the province where they are tried by ordinary courts.[340] Judges at the cells therefore enjoy considerable discretion in the preparation of the dossiers, which they have often used to their advantage by implicating some and securing the release of others.

The courts are independent under gacaca law; therefore there is formally no mechanism for oversight by sector or cell government officials. The judges are accountable, directly and most regularly to the SNJG coordinator at the district who in

[335] To try category 3 accused
[336] To try category 2 accused
[337] SNJG monthly reports, Northern Province April 2004
[338] At one of the trials in Masaka sector, the accused was handed a verdict of 26 years. He walked casually out of the sector office where the trial was being held and was last seen entering a bar. He used the back door to escape. There were no police or local defense personnel present on that day. Since that episode, there have been one or two members of the local defense force- LDF (civilian patrols who are given some army training) equipped with sticks. Intermittently, over the course of the trials that followed, one or two policemen would stop by. They never stayed for more than a few minutes. Masaka sector 2005.
[339] A step in between is the vetting of the dossiers prepared at cell level by the Parquet, before the dossiers are forwarded to sector gacaca, cell gacaca, or province-level ordinary court depending on how the dossier is categorized.

[340] The gacaca law revised in 2007 authorizes gacaca courts to try category 1 accused as well.

turn reports to a supervisor at the SNJG province office. It is at the province that SNJG officials interact extensively with the offices of the prosecution department and prisons. Problems originating at sector or cell courts are directed by the SNJG district coordinator to his bosses at the province, who in turn may consult the prosecutor, director of prisons, or SNJG directors in Kigali. Figure 6.2 maps the institutional linkages between cell-sector courts and the SNJG on the one hand, and the linkages between SNJG and government organs on the other.

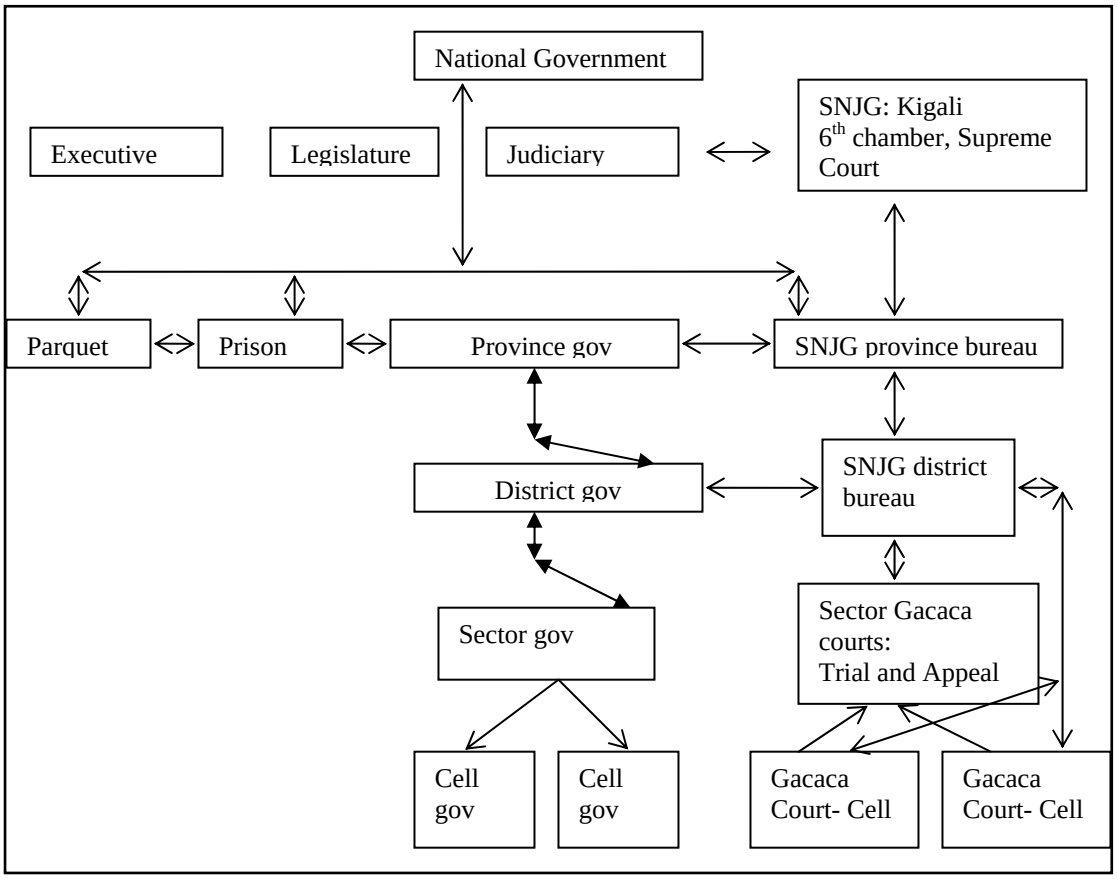

Figure 6.2 Institutional linkages between gacaca courts and government organs

6.4 Judges as local elites

The argument of this chapter is that judges' maneuvers are 'tolerated' by political elites at the district because large numbers of them (particularly the five most important positions on the judges' panel of nine: president, two vice-presidents, and two secretaries) are also local elites with important positions on cell committees, *nyumbakumi* (leaders of ten households), sector councils, local associations and churches. Figure 6.3 below maps the intersection between judges and local elites and shows their relationship with organs of state.

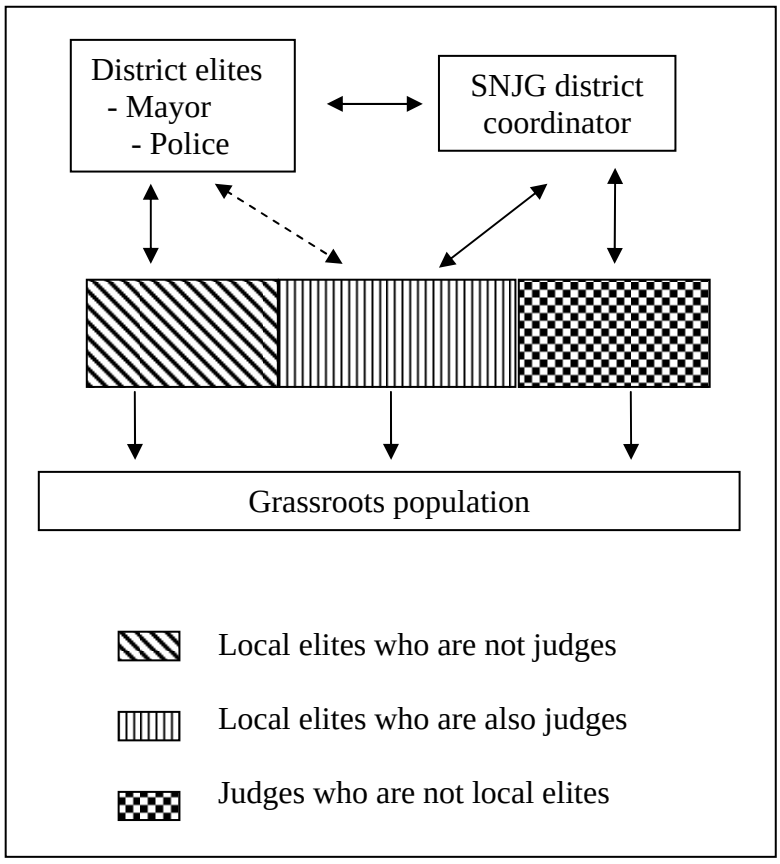

Figure 6.3: Judges, local elites and relationship with district officials

Without the cooperation of these individuals, it would be virtually impossible to continue with the trials or govern at the grassroots. Table 6.1 below shows that the most important positions on the bench are occupied by Hutu males who are members of the RPF. They are important intermediaries between the state elites (Tutsi-dominated and RPF) and the grassroots where Hutu are 85% of the population.

Table 6.1: Judges' Composition by sex, ethnic identity, age and political affiliation

Cell	Position	Ethnic id	sex	pre-1994 political party	present political party
1	President	H	m	PSD	RPF
	VP1	H	m	-	RPF
	VP2	H	m	MRND	RPF
	S1	H	m	-	RPF
	S2	H	m	MDR	RPF
	non-CC	T	m	MRND	RPF
2	President	H	m	PSD	RPF
	VP1	H	m	-	-
	VP2	H	m	-	-
	S1	H	m	-	RPF
	S2	H	f	MRND	RPF
	non-CC	T	f	-	RPF

Table 6.1 continued

Cell	Position	Ethnic id	sex	pre-1994 political party	present political party
3	President	H	f	PSD	RPF
	VP1				
	VP2	H	m	MDR	RPF
	S1	H	m		
	S2	H	m	-	RPF
	non-CC	T	f	-	RPF
4	President	H	m	MDR	RPF
	VP1	H	m	MDR	-
	VP2	H	f	-	RPF
	S1	H	f	-	-
	S2	H	m		
5	President	H	m	-	RPF
	VP1	H	m	-	RPF
	VP2	H	m	-	RPF
	S1	H	m		RPF
	S2	H	m	-	RPF
	non-CC	T	f	-	RPF

Note: Non-CC indicates a judge not on the coordinating committee of five. Also, (-) indicates no party identified by respondent. Blank cells indicate missing data.

Table 6.2 below shows how many judges on the coordinating committee of five hold or used to hold government power at the local level. They are local elites without whose cooperation the center has always had a problem governing the rural hinterland. We will see in the next section of this chapter that this gives local elites a certain leverage that they can use to their advantage.

Table 6.2: Judges' positions of power in grassroots governance

Cell	Position	Current position(s)	Past position(s)
1	President	sector council	cell committee
	VP1	-	cell committee
	VP2	nyumbakumi	cell committee
	S1	nyumbakumi	
	S2	cell committee	nyumbakumi
	non-CC	-	cell committee
2	President	RPF VP cell + 2 cell committees	-
	VP1	nyumbakumi	-
	VP2	-	-
	S1	cell committee	-
	S2	-	-
	non-CC	sector council	cell committee
3	President	sector council + district council	-
	VP1	-	-
	VP2	-	nyumbakumi

Table 6.2 continued

Cell	Position	Current position(s)	Past position(s)
	S1	-	-
	S2	cell committee	-
	non-CC	-	-
4	President	nyumbakumi	cell committee
	VP1	-	district Mayor
	VP2	-	-
	S1	sector council	cell committee
	S2	-	-
5	President	cell committee	-
	VP1	cell committee	-
	VP2	cell committee	-
	S1	cell committee + nyumbakumi	-
	S2	RPF President of cell + cell committee	-
	non-CC		

Note: Blank cells indicate missing data. (-) indicates no positions reported.

Table 6.3 below shows how many judges on the coordinating committee hold important positions in churches and local associations.

Table 6.3: Sources of power independent of government positions

Cell	Position on Gacaca	Church	Current association membership(s)	Past association membership(s)
1	President	secretary- Legion of Mary	-	cell (1)
	VP1	-	district (1) + cell (2)	-
	VP2	-	-	cell (1)
	S1	president- cell committee	cell (2)	-
	S2	-	cell (1)	cell (1)
	non-CC	president- 6 cells committee	-	-
2	President		cell (1) + sector (1)	-
	VP1	president- cell committee	cell (2)	-
	VP2	-	-	sector (1)
	S1	treasurer- parish	cell (1)	-
	S2	-	cell (1)	-
	non-CC	choir member	-	-
3	President	president- cell	dist (1) + sector (1)	-
	VP1	-	-	-
	VP2	-	chief inspector- cell (1)	secretary- cell (1)
	S1	choir member + officer- Caritas	president- district (3) + vice president-sector (2)	-
	S2	choir leader	president- cell (1) + secretary -cell (1)	-
	non-CC	-	sector (2)	-

Table 6.3: continued

Cell	Position on Gacaca	Church	Current association membership(s)	Past association membership(s)
4	President	-	president cell (1)	-
	VP1	president-Caritas	-	cell (1)
	VP2	-	-	-
	S1	-	cell (1)	-
	S2	-	-	-
5	President	-	-	secretary- sector (1)
	VP1	-	president-cell (1)	-
	VP2	-	cell (2)	-
	S1	-	president-cell (2) + district (1)	-
	S2	-	cell (1)	-
	non-CC	-	treasurer- sector	sector (1) + cell(1)

Note: The numbers within brackets denote how many associations the individual is a member of. The reference to district, sector or cell next to these brackets means that the association in question draws its members from that catchment area. (-) indicates no official position or membership reported.

This is a source of status and influence for these individuals that are independent of government. It gives them additional leverage vis-à-vis elites at the center in that the latter cannot afford to deprive itself of the cooperation of influential opinion leaders and powerbrokers at the grassroots. At a minimum, the government relies on local opinion leaders to advocate on their behalf the usefulness of gacaca, to mobilize and to continually sensitize the local population.[341] During field research, I encountered some judges who reported that their services had been utilized during the Presidential and Parliamentary elections. They had been ordered by district officials to mobilize people and ensure that the local population voted for the RPF candidate.[342]

It is not surprising that given their governmental and non-governmental sources of power, most judges are able to hold onto their positions at the gacaca court as we can see from Table 6.4.

Table 6.4: Limited judges' turnover at election

Cell	Position	In same position since… (founding election =June02)	New position after 2004 judges' election
1	President	Jun-02	new position: President of appeals Court
	VP1	Jun-02	remains VP1
	VP2	Aug-02	remains VP2

[341] National Unity and Reconciliation Commission (n. d) "Nationwide grassroots consultations report: Unity and Reconciliation Initiatives in Rwanda" Kigali.
[342] They were threatened that they would be responsible if a certain number of votes were not delivered for the RPF from their community.

Table 6.4 continued

Cell	Position	In same position since… (founding election =June02)	New position after 2004 judges' election
	S1	Jun-02	new position: President of cell court
	S2	Mar-03	new position: S1 of cell court
	non-CC	Jun-02	resigned
2	President	Jun-02	replaced by district elites
	VP1	Jun-02	new position: President of cell court
	VP2	Jun-02	replaced by district elites
	S1	Jun-02	replaced by district elites
	S2	Jun-03	new position: became S1
	non-CC		new position: became VP2
3	President	Sep-02	remains President of cell court
	VP1		
	VP2	Dec-02	remains VP2
	S1	Jun-02	remains S1
	S2	Aug-02	remains S2
	non-CC	Jun-02	remains non-CC judge
4	President	May-03	remains President cell court
	VP1	Jun-02	not re-elected
	VP2	Jun-02	new position: became non-CC

Table 6.4 continued

	S1	Nov-02	remains S1
	S2		
5	President	Mar-03	remains President of cell court
	VP1	Aug-02	remains VP1
	VP2	Jun-03	remains VP2
	S1	Jun-02	remains S1
	S2	Jun-02	remains S2
	non-CC	Feb-03	remains non-CC permanent judge

Note: Blank cells indicate missing data

Over a two year period (2002-2004) the turnover among judges has been limited; elections tend to result in a reallocation of the positions among the same people. Judges then represent a class of important actors entrenched at the local level. The demand for their services (judicial, local governance, opinion leaders) based on their influence within their communities creates a situation where elites at the center cannot afford to alienate them and allows them relative autonomy in exchange of a broad and continued cooperation.

6.5 Judges' autonomy and arbitrariness

Although the gacaca law formally protects judges from political interference and there is no formal mechanism for regular oversight except by the SNJG coordinator, district elites did intervene during my stay in Masaka sector. These were not only limited interventions; in most cases, these were delayed interventions as well.[343] District

[343] In 2006, the genocide survivors' umbrella organization IBUKA complained that the government was not doing enough to ensure the safety of survivors. See US Department of State (2007). Also see Hirondelle New Agency (2007, January 31)

elites either had a stake in the outcome of a particular case or they were responding to the distinct possibility that struggles and maneuvers around gacaca that they had allowed so far had reached a dangerous peak and needed to be checked.

The subterranean nature of maneuvers around gacaca and the considerable attempt to keep up appearances made it problematic to tap into and collect data on local power struggles. However, these dynamics often became very complicated drawing in multiple actors making it difficult to contain contentious activity. Disputes that broke through the surface provided 'windows of opportunity' allowing a glimpse beyond the carefully arranged façade. The data presented here draws on informal conversations and formal interviews with all the relevant actors as well as careful observation of the processes as they unfolded over several months. One or more active incidents were reported in seven out of nine cells in Masaka sector during my stay there. Maneuvers and local upheavals around gacaca were also reported in each of the three other sectors in different parts of the country that I visited during the pre-trial hearings stage in 2004. Judges were involved in a majority of the cases reported.

In one cell, for example, survivors had been complaining against the actions of the president of the cell court for well over a year but there was no action on the part of the SNJG coordinator of the district. At the re-election of judges the next year, survivors grouped together and raised the same accusation in an effort to prevent the re-election of the president. Things became very tense when the community split into groups, shouting and pushing one another. This brought the police down from the district and the president was eventually prevented from contesting the election.

In another cell, the president was accused of having participated in events that led to the death of a child. The president together with his cronies on the bench suppressed that information allowing him to continue at the head of the cell gacaca court. The first

vice-president however was ambitious and aspired to the president's post. He began to conduct his own investigations. He visited survivors' homes and collected information on the case. The president had to step down when he raised the accusations anew and supplied the information he had at his disposal. The first vice-president took over as interim president until the judges' elections could be held. It appears that at this time the ousted president who belonged to a prominent local family sought the help of his supporters on the bench to conspire against the interim president who was determined to pursue the case of the child's death.

At court hearings, the interim president discovered that his fellow judges were deliberately insolent and the community indifferent to his authority. He responded by insulting and threatening his colleagues and those who attended the hearings. There were serious problems such as missing documents and disrupted sessions. These issues were not dealt with for a whole year even though the SNJG coordinator as well as cell and sector officials were aware that these things were happening. Things took a disastrous turn during my stay. The house of the interim president was broken into and the dossier on the child's death was removed along with other court papers. Whoever had entered the house did not enter through the door as the lock was intact. A small hole had been made in one of the walls. The interim president was accused of gross negligence by local officials and threatened with a possible prison term. Important members in cell government were related to the ousted president. They refused to believe that someone had broken into the house when the locked door remained intact. The interim president finally tried to commit suicide. It was after this incident that the Mayor and the district police became involved in the affairs of the cell gacaca court. The pattern was the same: despite being cognizant of manipulations by the judges,

district elites did not respond until events occurred that threatened an outbreak of violence.

In a third cell, the erstwhile Mayor became involved in gacaca proceedings. He was a genocide survivor and wanted to pursue the cases of his friends who had died. The president of the cell court secured the release of a prisoner who had been accused of killing a friend of the Mayor. The bench had determined that the accusations against the prisoner were not credible because they believed that the accuser's account was implausible. They dismissed the idea that the accuser (another survivor) could have spotted the alleged perpetrator from his hiding place up in the ceiling. They reasoned that the perpetrator had been searching the house for Tutsi who were hidden and must have searched the space above the ceiling as well. How could it be that the survivor spotted the alleged perpetrator from the ceiling but the latter did not spot him? The judges concluded that the survivor must not have been present at that time and that his testimony could not be an eye witness account. They signed the papers authorizing the accused person's release. This did not create a furor until the prisoner returned to the community some months later. The ex-Mayor was a powerful man and although he did not live in that sector any longer, it was perhaps at his request that district officials got involved. They summoned the president of the cell court to the district office to explain and pressured him to resign from his position. People huddled in bars that evening discussing what had transpired at the district office. Apparently, the president had written that he was resigning because he was felt threatened (the subtext was he felt threatened by district authorities) and could not be sure he was safe. The local interpretation of this was that the president had taken a great risk but had heroically resisted the interference of an unpopular government into local affairs. In this case, district elites became involved because they were interested in a particular outcome.

6.6 Judges and the uses and abuses of information

In this section, I use an example from the trial court at sector level to show how judges' manipulations create uncertainty. This contentious episode drew in survivors, judges and the accused, exposing patterns of collusion among them and the struggle to manipulate the legal outcome for a particular case. The accused in this case had already confessed, so one might presume that his verdict was certain. But judges are able to manipulate local processes throwing apparently foregone conclusions in doubt.

The normally composed president of the trial court announced heatedly at the end of a court session that he had been accused by another judge (a survivor with a non-permanent position on the trial court) of attempting to suppress the dossier of a certain individual who was coming up for trial in a couple of weeks. He said he wanted to make a public statement so that no one might impugn his motives.

It transpired that the accused individual in question, James,[344] had two dossiers compiled by two different cell-level gacaca courts. He had been accused of committing category 1 crimes in a cell and category 2 crimes in the other cell. Since category 1 crimes were tried by ordinary courts in 2005, one of his dossiers had been transmitted from the cell court directly to the Prosecutor's Office at the province without the knowledge of the gacaca trial court. This meant that James could not be tried at the gacaca trial court any longer because an ordinary court would have jurisdiction over anyone charged with category 1 crimes.

The president had a special interest in James' trial because of extended family ties.[345] He was concerned that he was now unlikely to be able to control the outcome of James' case. Some judges at the trial court had a private meeting with the president

[344] Names of people and places have been changed to ensure anonymity
[345] Conversation with survivor, Masaka sector, July 2005

of the cell court that had sent James' dossier to the province.[346] They berated and threatened him for this 'mistake' to which he replied that he was only following the rules. When Agnes, the judge who was a survivor, protested, there were sharp exchanges on all sides. Agnes later suggested to me that there were two factions: The first was dominated by the president and allied judges who wanted a way to retrieve the dossier from the Prosecutor's Office and they needed a reason, probably an admission of error on the part of the cell court, to justify a request for reconsideration of the category 1 dossier. The second faction comprised Agnes and the first vice-president, Cyprien, who were reluctant to have James tried at the sector court.

While all this transpired behind the scenes, the trial court carried on with its work and there was no further mention of James' case in public. Two weeks later, rumors began to circulate about the first vice-president. It was usually hard work collecting and putting together information when people were so secretive, but this time I was invited into a bar as I was passing by and given the latest update on the vice-president. James had accused him of refusing refuge to a child who was later killed. More stories about Cyprien began to circulate. Apparently, he had also possessed a gun during genocide and there had been a road block at the crossroads near his house where people were checked for their identity cards and Tutsi killed.

The timing of the accusation against Cyprien was not accidental. The substance of the accusation, however, did not seem like it was entirely false. Two years earlier, Cyprien had been accused in the death of the child. As I spoke to judges in the cell where the accusation had surfaced, I was surprised to learn that Agnes had stood up to defend him at that time and the cell court had not ventured to register the accusation or create a dossier for Cyprien. A survivor's accusation against someone or in defense of

[346] Conversation with Agnes who was present at the meeting, July 2005

someone was generally taken seriously. This had allowed him to stand for election as vice-president of the trial court. The alliance between Agnes and the vice-president seemed to go back a long way. What was at stake in this alliance? And why was the vice-president being accused anew?

Having spent a few months there already, I had observed that survivors felt they needed a Hutu 'patron' who would lobby for them and generally look out for their interests. In Masaka sector, most survivors were Tutsi women. One of them had a Hutu husband who was a retired policeman but still enjoyed some amount of prestige within the community because of the official position he had once held. Survivors mentioned taking their worries to him in the hope that he would mediate on their behalf. Of late, however, they had begun to feel he was unreliable because they learnt he had been discussing with his friends and acquaintances things they told him in confidence.[347] Was this part of that same pattern? As a judge with a non-permanent position on the panel, Agnes had little influence on the inner circle- the president, two vice presidents and two secretaries. As a woman, she would also be generally excluded from private conversations among her male colleagues at beer-drinking sessions in bars. Survivors often found themselves the target of a general resentment because they were responsible for accusations and arrests.[348] There were ways in

[347] This was reported in various conversations with survivors, April-July 2005

[348] People grumbled privately that survivors intended to see all Hutu put away in prison. Survivors who are well aware of these resentments cope in interesting ways. Agnes, the survivor on the bench, for instance, was a non-permanent judge and would fill in for a permanent judge every now and then. She would go to great lengths to simulate a lack of interest in the proceedings. At one trial, she had a gacaca manual with her and for the entire duration of the trial, refused to look up from it. Once or twice she would get up from the bench and go out for a few minutes only to immerse herself in reading again. She was listening intently however. When the defendant's testimony was contradictory, she would look at him briefly, survey the reactions of those present in the audience and return to her book. At another trial, an elderly woman (survivor) stood up a little uncertainly to press fresh accusations against the defendant who had confessed. But when neither the judges nor the audience seemed inclined to believe her account, her female survivor friends laughed at her along with the crowd and pulled at her to sit down. From these and other similar observations, it appeared that survivors were anxious not to give the impression that they were over invested in pursuing the cases of those accused.

which conversations would shut down when a survivor arrived upon the scene, so Agnes would presumably be cut off from certain channels of information.

It seemed rational for Agnes to locate in Cyprien a willing ally on the 'inside'- someone who could pass on crucial information and be sympathetic to survivors' interests during specific trials. Also, Agnes, it turned out, had been pursuing James' case for a long time. He had led an attack on her home during the genocide, besides being accused of various other more serious crimes. She appeared determined that he would not have the benefit of a lenient sentence at the gacaca court. Cyprien was probably returning Agnes' favor from two years ago, as he tried to obstruct the president and his coterie from successfully maneuvering to retrieve James' dossier from the Prosecutor's office. This not only explained the alliance between them but also indicated that the resurfacing of the old accusation against Cyprien was not accidental.

The denunciation against Cyprien is revealing of the manner in which information is guarded and used in gacaca. The president and the other judges had been fully aware of the accusations against Cyprien,[349] yet they had no reason to use it against him just so long as he worked with them. It seemed especially audacious to use James to bring up the old information and force him to resign from his position. Cyprien continued to attend the trials but he began to arrive late and looked visibly worried. He had been an assiduous note-taker during testimonies but he now sat quietly without bothering to write anything down.

He was eventually removed but James' case was not resolved while I was there. He had been provisionally released because he had confessed to category 2 crimes. He

[349] Interview with president of trial court, Masaka sector, July 2005

was not re-arrested even though a second dossier charging him with more serious crimes had come to light.

For Hutu who have no connections to powerful judges, the entire process appears fraught with uncertainty. Yet, the case of Cyprien indicates that uncertainty tends to diminish with the exposure of information. For Cyprien who could not this time around summon a coalition in his defense, the fresh accusations meant the certainty of removal from the bench and the addition of his name to the list of those accused of genocide crimes.

6.7 Conclusion

Judges are centrally involved in manipulations around gacaca at the local level. Their actions are self-interested: to secure the release of a friend or relative, to secure the removal of someone who obstructs their attempts to intervene in favor of someone, to eliminate old rivals and move up in the local hierarchy of power. While judges' manipulations create an environment of uncertainty about trial processes and even outcomes, it is the accumulation of information against an accused that reduces the element of uncertainty making it more likely that the accused will not survive the process by simply insisting he is innocent.

Judges are able to do this because gacaca courts operate within a larger political structure in which judges are 'allowed' to enjoy some autonomous space by a state that is otherwise excessively controlling with regard to local affairs. Judges are important actors at the local level. They are opinion leaders, hold influential positions in local associations and Churches and are mostly Hutu. Many of them occupy positions in government structures at the grassroots and are members of the RPF. Their co-optation and compliance is vital for ruling elites at the center who need to

project their power into the hinterland. This is especially crucial for a regime dominated by elites of the ethnic minority group who are confronted with the task of political regulation and governance of the majority of the population. As long as these actors comply with directives from above (for instance, with regard to running the gacaca courts or the implementation of specific policies), ruling elites at the center refrain from overt and excessive kinds of intervention in local affairs.

CHAPTER SEVEN

CONCLUSION

7.1 Taking stock

The findings of this dissertation present a bleak picture of politics, justice, truth and reconciliation in Rwanda more than a decade after genocide. The anger and resentment on the ground are palpable but well concealed behind a façade of quick affirmations of the benevolence and wisdom of the ruling elites.

The reasons are twofold: First, the human cost of justice has been high. People live in fear of being denounced, livelihood earning members of families have been incarcerated for years in pre-trial detention, gacaca's quick and rough justice can destroy those who are innocent but have no means of defending themselves except resort to manipulations of their own. Justice is experienced not so much as a reformatory process but as terror and persecution.[350] Second, justice is also experienced as a disempowering and humiliating process.[351] The trials have reduced citizens to a subject-like dependence on ruling elites. Arrests, releases, re-arrests, trials and sentence reductions are determined by the state depending on its political calculations. Ordinary Hutu are eager to comply if that means a continuous flow of benevolence from state authorities in the form of reduced punishment, provisional releases and fewer arrests. Any measure of reprieve is gratefully accepted and generates approval for ruling elites despite reservations about their moral authority to rule.

[350] A few thousand Hutu fled the country in 2005-6 fearing persecution by gacaca courts. E. Ndikumana (2005, April 19)

[351] One of the accused who had confessed put it across in this way: "They treat me like I am not a human being any more" June 2005 Masaka sector

The central theme of this dissertation, "surrendering consent", identifies this emergent relationship specifically between ruling elites and those who have confessed. It establishes a linkage between micro-processes and an institutional outcome,[352] in this case, the emergence of a de facto contractual relationship in which compliance is rewarded by ruling elites and continued compliance is ensured because people fear that the rewards on which their survival depend may be withdrawn at the discretion of those in power. I argue that confessions produce political quiescence which ensures that they are unwilling to protest against or punish ruling elites. This has not produced a government constrained by its people. It has undermined a democratic transition and enabled regime consolidation over the course of the transition. In this chapter, I first summarize my main arguments. I conclude by discussing some theoretical and practical implications of this research project.

7.2 Summary of main arguments

7.2.1 Causes of confession

The accused fear that those who confess will become easy targets for indiscriminate retribution by the state; therefore, they hold out from confessing as long as they can even though they are aware of the reduced sentences for those who step up to acknowledge their role in genocide. This fear of ruling elites stems from their perceptions about the discriminatory and oppressive nature of Tutsi rule in general and of RPF rule in particular.

However, the more information accumulates against an accused individual over time, the more likely it becomes that he will be unable to defend himself in a gacaca court. Defendants do not have access to legal counsel under gacaca law. Moreover,

[352] I refer to the positivist tradition of interpreting institutions as de facto rules that regulate political life regardless of whether the rules are written in formal legal texts.

gacaca court processes are embedded in local contexts rife with manipulations and power struggles in which judges are often implicated. All this creates fundamental uncertainty about the defendant's prospects at trial that is offset by one factor: information availability. In the absence of other kinds of hard evidence commonly introduced in criminal trials, gacaca judges often have no other means of arriving at a decision other than to take into account the number of witnesses who back the same narrative. This means that the higher the number of people denouncing an accused individual, the more likely that this person will be unable to mount a successful defense.

I identify two main mechanisms of information exposure- denunciations by those who have already confessed and witness testimony. These may be true or false but the accused individual who fears he has been irrevocably exposed and may be unable to mount a counter-coalition in his defense at trial is confronted with a decision at this point. If he does not confess and is determined guilty at trial, the penalties under the gacaca law are severe but if he confesses, he may be eligible for a reduced sentence. It is in the accused individual's interest to confess if the weight of accumulated information works against him. Thus, information exposure and self-interest are key causal factors in the production of confessions. The number of confessions has steadily risen over the years as the trials process has continued. By 2006, the confessed comprised 1 in every 31 individuals in the adult Hutu population at the time of genocide.

7.2.2. Consequences of confession

Having surrendered a confession after holding out for numerous years, the confessed continue to fear the possibility of indiscriminate punishment. Political quiescence is a

way to signal their loyalty in expectation of the promised sentence reductions and provisional release from prison.

I find that the confessed are unwilling to hold ruling elites accountable; they are likely to support the political status-quo and are eager to appease those in power. They do this despite believing that ruling elites lack the moral authority to govern for failing to account for crimes they have perpetrated against Hutu.

I find that the confessed are not particularly different from those who have not confessed in terms of their perceptions about the current ruling elites, their attitudes towards survivors and perceptions about historic legacies of conflict. Yet, as I show in chapter four, those who have not confessed demand regime change and talk of political negotiations at elite level between the government and its opponents in exile. In contrast, the confessed are likely to dissemble and praise the "good rule" of this government. When asked to locate responsibility for the country's historical legacy of conflict or the violence of the recent past, the non-confessed systematically exonerate Hutu elites while the confessed exonerate Tutsi elites.

I identify this as a 'consent-effect' simulated by the confessed in their self-interest because they fear that their promised benefits may otherwise be withdrawn. Confessions therefore produce compliance and engender a dependence on ruling elites in order to keep benefits such as reduced sentences flowing on which their security and freedom depends.

7.2.3 Trials and regime consolidation

Based on the finding that confessions produce compliance, I make two inferential claims: First, the 'consent-effect' is likely simulated by those proximate to the confessed such as their immediate family members who are concerned for the safety

of their relatives in prison and fear they might themselves be targeted for punishment. In the community-based part of field research, it was not unusual to hear from those who had family members in prison how concerned they felt about their own safety and how desperately they wanted their relatives to return home safely to contribute to the family income and help to raise the children. Those proximate to the confessed experience these anxieties, perhaps more so on account of the heightened vulnerability of those who have confessed. This diffusion of the 'consent-effect' would imply that a population larger than those who have confessed is likely to be compliant.

Second, the confessed were disenfranchised during the crucial end-of transition elections in 2003. This effectively neutralized a portion of the Hutu vote. However, I surmise that for every Hutu who had confessed and was disenfranchised, there were individuals proximate to the confessed who surrendered consent by transacting their vote hoping to appease the RPF which had maneuvered to prevent the emergence of a viable opposition and looked like it would inevitably win. Given the likely victory of the RPF and the prospect of continuation of the trials, transacting the vote would be a rational way of signaling their continued loyalty to ensure security guarantees in exchange. In chapter one, I use a rough calculation to show that 83% of the pro-Kagame vote was the Hutu vote and I argue that this is too large a margin to be accounted for by election fraud alone. As the reports of external observers indicate, the scale of election fraud was not significantly unusual from other elections contested by an incumbent candidate. I make an inferential argument that disenfranchisement of the confessed and the transaction of the vote by those proximate to the confessed contributed to the victory of the RPF at the polls.

This dissertation discusses two other ways that the trials have enabled the consolidation of a regime that is dominated by elites of the ethnic minority group.

First, the basic premise on which the trials were implemented, "genocide ideology" or the notion that Hutu were willing executioners socialized over decades into a culture that did not punish the killing of Tutsi, has not been critically re-examined since the beginning of the transition. Chapter two shows how the notion of "genocide ideology" has not been adequately defined by ruling elites. It has been used to target political opponents and has become the justification for developing repressive laws targeting freedoms of speech and expression, regulating the media and restricting human rights work. This has produced a repressive political climate in which the costs of opposition to the regime are significant. I argue that within this larger repressive environment in which ruling elites appear solidly entrenched in power and there is no viable opposition either at elite level or from organized civil society actors, the de-facto contractual relationship in which ruling elites can extract compliance from ordinary citizens in exchange of security guarantees tends to be stable and self-reinforcing.

Second, the co-optation of local elites into institutions of state and into the ruling party allows RPF elites at the center to regulate and govern the vast rural hinterland where Hutu comprise a majority of the population. Chapter six shows that gacaca judges who occupy important positions on the bench are mostly Hutu. Many judges are members of the RPF and also occupy important positions in government structures at the grassroots. Judges are important "allies" of ruling elites at the local level. Their compliance allows ruling elites to keep the gacaca courts functioning, to project power into the hinterland and to influence public opinion. During field research, it was also reported to me by some judges that they were ordered to mobilize the popular vote during the elections in 2003 and threatened with severe consequences if the desired results did not materialize. Judges are rewarded for their compliance by a measure of relative autonomy at the local level. Ironically, judges use this relative autonomy to

maneuver around the rules to secure the release of friends and relatives. Some use their position on the bench as a launching pad toward official positions at a higher level, for example, to contest elections as the coordinator of the sector or a post in district government. State elites refrain from intervening unless they are interested in the outcome of specific cases or if local manipulations cannot be contained further and threaten to erupt into violence. This has caused survivors to complain bitterly about the negligence of state authorities with regard to gacaca processes.

7.3 Theoretical implications

In a recent volume on transitional justice, Ruti Teitel raises a question that is not often asked "What, if any, is the relation between a state's response to its repressive past and its prospects for a liberal order?"[353] Teitel offers a historical and interpretive account of normative shifts between regimes that are enabled publicly and authoritatively by transitional legal processes. While this dissertation proposes an answer to the same question and concurs with Teitel's emphasis on the independent and consequential role of transitional jurisprudence, it moves in a different direction. I use an agent-based materialist framework in which both pre-existing beliefs and self-interest matter. My focus is on the micro-politics of individual responses to the incentives and sanctions of the law and its consequences for generating a new set of de facto rules that regulate the relationship between citizens and ruling elites. I conclude that trials implemented on a mass scale by ruling elites who are feared and widely perceived as lacking legitimacy hinder the prospects for a liberalizing transition.

This project sets up a general framework for comparative inquiry. It makes a case for examining the sources and effects of the institutionalization of new political relationships between citizens and state during transitional periods in comparative

[353] Ruti Teitel (2000), p3

contexts on the premise that the de facto bargains struck during this foundational stage have the potential to determine the trajectory of politics in years to come. It raises a host of unanswered questions that are not dealt with in the growing literature on transitional justice.[354] Could truth commissions or trials in ordinary courts have different effects? Does the scale of implementation matter in other contexts? Do pre-existing beliefs and political attitudes matter in the responses of participants in other transitional legal processes? Are the introduction of trials or truth commissions associated with a rise or decline in political activism and claims-making on the state? This project thus opens up other interesting lines of inquiry for future research.

This research specifically contributes towards a new understanding of the Rwandan transitional experience. Few scholars have conducted a detailed investigation of the gacaca courts and to my knowledge no one has focused on the micro-politics of the trials process, the politics of confession and its relationship to the political transition. Existing research deals with the potential of gacaca courts for deliberative discourse, inter-personal reconciliation, victim satisfaction and human rights praxis.[355] The empirical data as well as the theoretical connections are original contributions of this dissertation.

The findings of this research project are also timely in that specialized non-governmental organizations, foundations and donor governments are searching for general models and sets of 'best practices' that may be applied in other contexts. It is

[354] The bulk of this literature is concerned with explaining elite choices about particular mechanisms of transitional justice (eg. Trials versus truth commissions, amnesty, purges and reparation); the trade off between peace and justice in transitional polities; hybrid models of courts or truth commissions; the evolution of international and domestic jurisprudence in bringing perpetrators to account etc. See for instance, Naomi Roht-Arriaza (2005); Neil Kritz, ed. (1995); Naomi Roht-Arriaza and Javier Mariezcurrena, eds. (2006); Jon Elster ed. (2006); R. I. Rotberg and D. Thompson eds. (2000).
[355] See for example Ariel Meyerstein (2007) ; Phil Clark (2005); William Schabas (2005); Lars Waldorf (2006); Alana Tiemessen (2004); Mark Drumbl (2002); Ervin Staub (2004) ; Peter Uvin and Charles Mironko (2003)

therefore important to assess at this time to what extent the Rwandan experience is distinctive, how far the 'gacaca' model may be replicable and to what extent it has achieved its stated goals and produced a range of other consequences. A brief survey of the experiences with transitional justice in other countries that have suffered large scale violence shows that the Rwandan case is rather unique in at least three ways: first, in the emphasis of successor elites on trials, their repudiation of a truth commission and general neglect of a reparations policy; second, in the wide ranging goals that these trials are expected to achieve: a larger historical truth about the genocide, justice, national unity, interpersonal reconciliation, psychological healing and even development; third, in pursuing prosecutions not only of elites but also of ordinary perpetrators on a mass scale.

In contrast, successor elites in transition countries have preferred to use a combination of mechanisms with each of those limited in scope and aimed at achieving a limited and specific set of goals. For instance, Sierra Leone has recently used a truth commission and pursued selective prosecutions simultaneously. Other countries chose to implement different accountability mechanisms in a sequential manner. In the 1980s, Argentina and Chile for example relied primarily on truth commissions to identify broad patterns of violations, locate responsibility for crimes committed by various parties, examine the sources of their countries' troubled histories and recommend institutional reforms. Amnesty laws protecting former elites from prosecution, such as those in Chile, Argentina and post-Franco Spain in the late 1970s are today considered a violation of international law.[356] Only with the passage

[356] See for example, UN Security Council (2004)

of time have ruling elites in Chile and Argentina undertaken selective prosecutions of those responsible for the repressive regimes of the past.[357]

In post-apartheid South Africa, the truth and reconciliation commission investigated crimes perpetrated both by the former regime and African nationalists. The recommendations were used to pursue selective prosecutions of apartheid era officials at a later time. In the post-Soviet countries of Eastern Europe, lustration laws were passed aimed at purging various levels of officialdom associated with past repressive regimes. Some of these countries opened secret police files instead of instituting official truth commissions. In addition, selective prosecutions, such as the trials of East German border guards, were pursued in some cases.

Post war Germany, probably the case closest to Rwanda in terms of having experienced genocide, also pursued a range of accountability measures. These included selective prosecutions at Nuremberg, a policy on reparations for the victims of the Holocaust and a decentralized vetting process known as de-Nazification that was implemented by local boards on a mass scale. Given the millions of cases[358] to be processed by local boards, the delays and maneuvers by board members and prosecutors (laymen from local communities) such as downgrading the majority of serious offenders such that they were free from sanctions other than a fine[359], growing allegations of persecution from the German Right and the political need of the

[357] In Spain, there has been, since the late 80s, a growing momentum on a reparations policy. See Paloma Aguilar (2007).

[358] Of 12,753,000 persons registered under de-Nazification procedures, almost three-fourths were found not chargeable under the various relaxation measures and limited amnesty provisions introduced by the US military government. At the end of April 1948, 3,209,000 cases had been processed of which 2, 373,000 cases were granted amnesty without trial, and 836,000 cases had been tried of which more than one third were exonerated. John H. Herz (1948), p577

[359] By the end of November 1946, less than 20% of those the US Military Government had considered "non-employable" on account of being "major Nazis" had been had been placed in categories with employment prohibitions and the remainder had been classified as "followers" liable for lesser penalties or were exonerated. John H. Herz (1948), p572

Occupation Government to have an ally in Germany in the context of a rapidly developing Cold War, de-Nazification processes barely lasted two and a half years and were called off by the summer of 1948.

Clearly, holding hundreds of thousands of people accountable at the local level was not something that could be accomplished unless it was politically expedient to do so. In Germany's case, continuation of the de-Nazification policy had become politically problematic. Relying on Germans who were embedded in their local communities to oversee the process inevitably ran the risk that there would be attempts to maneuver around the rules to secure local interests. In the Rwandan case, however, the local tribunals have been allowed to continue despite local manipulations and long delays because there is no domestic opposition and it has been politically expedient to do.

The Rwandan government has sought to justify the gacaca courts in the name of Rwandan tradition but it is important to note that gacaca courts apply criminal law backed by the coercive apparatus of state without concomitantly guaranteeing defendants the legal rights they would have been entitled to in ordinary courts. This is different altogether from the softer, informal aspects of customary gacaca in Rwanda and even other indigenous mechanisms that are being used on an experimental basis in different transitional contexts. For example, in some local communities in Sierra Leone, a process called Kpaa Mende is used to elicit confessions.[360] The victim (of a theft, for example) announces his intention to use a diviner to issue a curse upon the wrongdoer and his family unless the perpetrator steps up to acknowledge his guilt. The town crier publicly discusses the effectiveness of the curse which apparently has resulted in the deaths of people when used on earlier occasions. This creates a pressure on the family who may have knowledge of the crime. It also pushes the perpetrator

[360] Joe Alie (2008).

who may not wish harm upon himself or his family to step up and confess. Cleansing rituals are used to relieve the perpetrator of the curse if he confessed after the diviner has already issued the curse in a public ceremony. USAID has been supporting customary local processes in Uganda (for reintegration of former rebels) and elsewhere that facilitate truth telling and inter-personal reconciliation. Although customary gacaca has been a more secular and community-based deliberative process, there are ways in which community pressure, shaming and other mechanisms could be used to elicit confessions, generate truth and produce reparations at local level without having to use criminal sanctions and the coercive apparatus of state.

The gacaca courts' criminal sanctions, their use on a mass scale, their neglect of fair trial guarantees and the politically calculated failure of ruling elites to address serious rights violations other than genocide suggest that justice is experienced as the persecution and criminalization of Hutu as a collective. The damaging consequences of these trials for political life and the transitional political regime have been identified and discussed in this dissertation. In the following section, I undertake a brief assessment of the extent to which these trials have met their formally stated objectives. I conclude by suggesting that the trials for genocide crimes need to be restricted in scope, limited to the prosecution of former elites as in most transitional countries and processed in ordinary courts. The gacaca tribunals may be modified to work as local truth commissions and decide on reparations to be made by perpetrators to survivors and other victims.

7.4 Practical implications

The trials are expected to generate truth, justice and reconciliation. They have achieved a measure of all three goals but the cost of that success in human and ethical terms has been considerable. For all those who are truly guilty and are determined as

such by the gacaca courts, there are also many who are likely to be innocent but will not stand a chance at trial because of the weight of false denunciations. Even if those who are really innocent and falsely accused are eventually acquitted at trial, it may take a few years to actually get to trial. This intervening period can be severely distressful. They may be arrested and detained. If they are not arrested immediately, they suffer loss of social status and are vulnerable to harassment by local foes. Apart from this human toll, the maneuvering and manipulations that are (inevitably) part of the gacaca process does not bode well in terms of fostering respect for the rule of law. If anything, people tend to learn by means of observing others and practicing the art of manipulation themselves that if they have access to influence and resources, there is a way to maneuver around the rules.

Survivors too are in a difficult situation. They may not be able to parse out the truth from the tangle of confessions and testimonies that are often contradictory and sometimes contrived. They are often indifferent to confessions delivered mechanically in the courtroom. Only one defendant in the six trials I observed cared to seek out the plaintiff in the case and ask her directly for forgiveness. The tense atmosphere eased immediately as people nodded in approval and the defendant wept openly. Some survivors told me that there were a few defendants who were ashamed and afraid to display their emotions in the glare of public scrutiny in the gacaca court but that they had sought the survivors out in their fields or on the road when they were alone and asked for their forgiveness.

The pressure to tell the truth by threatening severe penalties has some dangerous consequences. Secret groups with names like “ceceka” (be quiet) hold clandestine meetings to urge people not to testify or cooperate with the gacaca courts.[361]

[361] Burnet, Jennie E. (2007). I heard similar rumors about secret meetings held in local bars where those who had gathered were urged not to cooperate with the courts.

Witnesses, survivors and even gacaca judges have been killed. One can interpret this either as evidence of a dangerous ideology at work (as the government is wont to do[362]) or as the actions of desperate people pushed to the brink who will do desperate things to avoid long prison terms and further sanctions. Finally, the resentment building up against survivors within communities undermines a substantive gain made by the gacaca courts. If ordinary Hutu had believed during genocide that all Tutsi were their enemy, they now seem to be acknowledging that their victims were innocent and vulnerable people. However, this distinction tends to collapse when they complain about the perceived nexus between survivors and the state; an alliance with the apparent objective of sending all Hutu to die in prison. These resentments reinforce pre-existing beliefs about the nature of Tutsi rule and the advantages that accrue to ordinary Tutsi therein.[363] If there is potential for a genuine normative shift, it is undermined by the resentment of ordinary Hutu at the stream of accusations over the last decade, the bursting prisons, serious rights violations and the impact on their families left to fend for themselves in precarious circumstances.

Based on the above observations, it seems like a practical solution to restrict trials to the pursuit of former elites (this would still allow Rwanda to live up to its legal and moral "duty to prosecute"[364]) and to use gacaca as local truth commissions rather than trial courts that enforce criminal law. The government acknowledges that ordinary

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[362] See for example a report by the National Unity and Reconciliation Commission on the causes of increasing violence after genocide. The report points to the role of genocide ideology and a culture of impunity. See National Unity and Reconciliation Commission (2008)

[363] An anonymous letter dropped off at a survivor's home said the following: "Because of your deep maliciousness wanting to let all of us people …die in prison…you planned to eliminate all the men… because you are greedy and you don't know who you are. But you will not achieve all this because we are vigilant…You will continue to let innocent people be imprisoned but be informed that people have had enough of being led by your dictatorship…." The letter ended with death threats and was signed "It is us, all the discontented people" Photocopied and published in The New Times (2005, March 9-10) (Translated into English by my interpreter)

[364] Diane Orentlicher (1991).

perpetrators were misled and coerced into participating in genocide. There is a need to re-think the assumptions that underpinned the argument for trials on a mass scale. Transitional justice strategies that rely on shaming, truth-telling, local deliberation and reparations without wielding the threat of punitive sanctions are likely to be more useful when dealing with ordinary perpetrators. This could have two significant benefits: First, there is already a degree of guilt and regret within communities and a desire to make amends for the past. Non-coercive informal mechanisms are probably best suited to beginning the long term task of social repair. This can be achieved without violating either the rights of the accused or the safety of survivors and witnesses. Survivors need the truth from perpetrators who are not continuously maneuvering to avoid the possibility of arbitrary punishment. Second, without a criminal trials process implemented on a massive scale, there is unlikely to be a large scale production of political quiescence of the kind suggested in this project. That should open up the prospect for a de facto renegotiation of the de facto rules of the political game between citizens and ruling elites.[365]

[365] Peter Uvin cautions that "the problems of Rwanda are present in the non-state sphere as well…authoritarianism, clientelism, distrust, and social exclusion (including the ideology that allowed genocide to happen…they are not the sole preserve of government…" He continues, "It just makes the notion that somehow thwarting, or replacing, the current government is the solution a lot less realistic or promising… Such understanding on my part is not the same, however, as abandoning any vision of social and political change. It just means we need to understand where Rwanda comes from, to better reflect on how to move forwards with it…" See Peter Uvin (2003)

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GLOSSARY

1.	CDR	Coalition for the Defense of the Republic: A radical Hutu party. Formed in 1992 after multi-partyism was formally adopted in Rwanda under international and domestic pressures. The party was known for its extremist anti-Tutsi rhetoric and its scathing critiques of the MRND for being too acquiescent to the RPF. Its youth wing contributed members to a dreaded militia known as the *Impuzamugambi* (those who have a single goal). The extremist press recruited prominent journalists from CDR political circles.
2.	Cell	The lowest administrative unit in Rwanda. Its leader, the cell coordinator (known as the *responsable* in the pre-RPF era), is supported by a cell executive committee, the cell committee on development, and the *nyumbakumi* who are the non-formal leaders for groups of ten households within every cell.
3.	*Gacaca* courts	A traditional local dispute resolution mechanism that relied on the mediation of 'people of integrity' to resolve petty disputes.

		Under the gacaca law in post-genocide Rwanda, community members who did not participate in genocide are elected to serve as judges and given some training in the law. (pronounced: ga-cha-cha)
4.	*Gacaca* (categories of crimes)	Category 1 includes those in positions of authority at the time of genocide, those who financed, organized or incited genocide, as well as those accused of sexual crimes; Category 2 includes those who committed homicide and their accomplices; Category 3 includes those who committed theft or arson. Until 2007, gacaca courts did not have jurisdiction to try category 1 cases.
5.	Hutu social revolution	1959. Led to the end of the Tutsi monarchy which had ruled Rwanda for four centuries. Mostly Tutsi elites but also hundreds of ordinary Tutsi were targeted for harassment and persecution and went into exile. The First Hutu Republic was inaugurated after independence in 1962.
6.	IBUKA	An umbrella genocide survivors' organization.

7.	*Icyitso*	Accomplice. (plural: ibyitso) All Tutsi were called ibyitso as were Hutu who were opposed to genocide or sympathetic to the RPF.
8.	*Ingando*	"Solidarity camps" organized by the RPF for specific groups of people: those who have confessed and are on provisional release, students admitted to college, soldiers of the former government returning from exile etc. Organized for a couple of weeks ranging to a couple of months. People are lectured on the RPF version of Rwandan history, ethnic relations, patriotism, civil education, unity and reconciliation. Group discussions and debate are encouraged.
9.	*Inkotanyi*	"Tireless warriors" or "those who do not rest till the goal is reached". The name of an ancient regiment under the King, it was adopted by the RPF during the civil war and was retained over the transition period.
10.	*Interahamwe*	Originally conceived as the 'youth movement' of the MRND. It means "those who work together" or "those who attack together". Later

		became one of the most dreaded civilian militia in the genocide.
11.	*Itsembabwoko n'itsembatsemba*	In the absence of the word "genocide" in the Kinyarwanda language, the term itsembabwoko was coined that meant literally the "elimination of an ethnie". Killings of Hutu perpetrated by Hutu extremists are called "massacres" (itsembatsemba)
12.	*Jenoside*	The Kinyarwanda mutation of the English word "genocide". It has gradually come to replace, in law and common parlance, the other Kinyarwanda word "itsembabwoko" (elimination of an ethnie). The reference simply to "jenoside" overlooks the other set of victims, Hutu moderates who died because they stood in opposition to the extremists.
13.	Kinyarwanda	The native language spoken by all Rwandans, particularly the rural masses. Elites speak French or English or both. All three are official languages in post-genocide Rwanda.

14.	LDF	Local defense force. Civilians recruited and trained by the army for the security of their communities.
15.	MDR	Democratic Republican Movement. An earlier version of the party was called the MDR-Parmehutu (party for the emancipation of the Hutu people). It was the main force behind the Hutu Revolution of 1959. It became the de facto single party of the First Republic and was associated with early rounds of anti-Tutsi violence. It was banned after Habyarimana's coup and the establishment of the Second Republic in 1973. It resurfaced as an opposition party in 1991 and adopted a more restrained image by dropping the tag "Parmehutu". Split into factions in 1993, the extremist MDR-Power faction joined the genocidal forces. After genocide, the party's moderate members were co-opted into the transition government. It has faced accusations of 'divisionism' since then and in 2003 a Parliamentary Commission recommended its dissolution.

16. MRND — The ruling party of the Second Republic (1973-1990) and the only party under the dictatorship of Juvénal Habyarimana. Every man, woman and child was a member of the MRND by default. Originally the National Revolutionary Movement for Development, it became the National Revolutionary Movement for Development and Democracy MRND (D) after the introduction of multi-partyism in 1991.

17. *Nyumbakumi* — Their position in local government is not formally codified. These are locally elected leaders for every ten households within a cell. They are responsible for managing a broad range of affairs in their constituency (security, health, immigrants into the area etc) and report to the cell coordinator (*responsable*) who reports to the sector coordinator (*Konseye*) who in turn reports to the Mayor at the district and so on.

18. PSD — Social Democratic Party. Prominent in the opposition to Habyarimana in the early 1990s. Its main constituency comprised teachers, civil servants and professionals. It split into moderate and extremist factions and the latter

		joined the genocidal project. Its moderate members were co-opted into the transition government after genocide.
19.	RPF	Rwandan Patriotic Front formed in 1988. Formerly the RANU an association of Tutsi refugees based in Kenya. Initiated a civil war from its base in Uganda in October 1990. Won the civil war and put an end to genocide in July 1994. Dominated the ten year transition government and emerged as the ruling party in the first multi-party elections in 2003, the first such in the country's history.
20.	Sector	Comprised of a number of cells. It is the administrative unit sandwiched between the district (above) and the cells (below). Its leader, the sector coordinator (or *Konseye* in the pre-RPF era) is elected by the leadership of the cells and supported by the sector executive and development committees. Prominent members of the sector serve in consultative and other capacities at the district headquarters.

21.	SNJG	National Service of Gacaca Jurisdictions. Established as the sixth chamber of the Supreme Court to put in place, manage and oversee the gacaca courts.
22.	TIG	“Travaux d’Interêts Générales” or “Works in the Public Interest”. Known simply as “community service” in the context of the commuted sentences for those who have confessed. It involves serving a portion of the sentence outside of prison working on infrastructure and other projects designated by the state. TIG camps, along with Ingando, have emerged as sites for political indoctrination by the RPF.
23.	*Ubuhake*	A form of clientship in which the patron allowed the client use of his cows and extended protection in exchange of labor, agricultural gifts and military service.
24.	*Ubukonde*	A form of clientship in which the patron owned land and rented parts of it out in return of gifts, labor or both.

25.	*Umuganda*	An obligatory contribution of labor towards projects designated by the state such as building roads, anti-erosion ditches, harvesting water etc. Institutionalized as a policy for national development during the Second Republic. Although legitimated in the name of peoples' participation, umuganda has generally required that leaders impose fines and other coercive measures in order to have people show up on the designated day and participate.